TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 270

MARTIN OCAMPO AND TEODORO M. KALAW, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED JUNE 6, 1912.

(23,243)

(23,243)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 669.

MARTIN OCAMPO AND TEODORO M. KALAW, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print
Certified copy of proceedings in the court of first instance for the city of Manila on separate trial of Martin Ocampo	a	1
Information	1	1
Motion to vacate order of arrest	12	8
Answer to motion to dismiss information	15	10
Order on motion for further time to present argument	17	11
Judgment on motion to quash complaint	19	12
Exception	25	15
Motion calling for proceeding of preliminary investigation	27	16
Judgment on foregoing motion	29	17
Motion for preliminary investigation	31	18
Judgment on foregoing motion	32	19
Order granting separate trials	35	21
Demurrer to complaint	36	21
Judgment on demurrer	48	29
Order entering plea	50	30
Order granting separate trial, &c	51	31
Order transferring cause to another judge	52	32

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 9, 1913

	Original.	Print
Judgment on the merits	55	33
Index to testimony	65	40
Proceedings at trial	66	40
Testimony of Dean C. Worcester	67	41
Arcadio Arellano	91	53
Enrique Barrera y Caldes	101	58
Santiago Perez	105	60
C. P. Shuman	111	63
Newton W. Gilbert	114	65
James F. Smith	117	67
Gregorio Araneta	126	71
Dean C. Worcester (recalled)	134	75
Gregorio Pasicolan	136	76
Hugo Salazar	142	79
Francisco A. Bustillo	144	80
H. H. Marcus	145	81
Maximo Sevilla	149	83
Lope K. Santos	151	84
Leoncio Gonzales Luquete	162	89
Pedro Amario	167	92
Faustino Aguilar	172	94
Fidel A. Reyes	180	98
Jaime C. DeVeyra	187	103
Fernando Maria Guerrero	191	105
Angel Jose	201	109
Felipe Barretto	206	112
James Francis Smith (recalled)	210	114
N. M. Saleeby	218	118
David P. Barrows	219	119
Jose Maria Romero y Salas	222	121
Reporter's certificate	225	122
Plaintiff's Exhibit A—Editorial entitled "Birds of Prey," published in the newspaper "El Renacimiento," October 30, 1908	226	122
B—Article published by the newspaper "El Renacimiento" in its gossip column, October 27, 1908	228	123
C—Article published in the newspaper "El Renacimiento," October 26, 1908	229	124
Defendants' Exhibit 1—Letter of Ocampo to Santos, January 2, 1906	231	126
2—Letter of Ocampo to Rivera, September 27, 1908	232	127
3—Letter of Ocampo to Kalaw, October 12, 1907	233	127
10—Note by the clerk	234	128
Complaint in case of United States *vs.* Guerrero *et al*	235	128
Judgment in favor of Ocampo	248	137
Clerk's certificate	269	147

	Original.	Print
Certified copy of proceedings in the court of first instance for the city of Manila on separate trial of Teodoro M. Kalaw	a	148
Information	1	148
Motion to vacate order of arrest	12	155
Answer to foregoing motion	15	157
Order on motion for further time to present argument	17	158
Judgment on motion to quash	19	159
Exception	25	162
Motion calling for proceedings of preliminary investigation	27	163
Judgment on foregoing motion	29	164
Motion asking for a preliminary investigation	31	165
Judgment on foregoing motion	32	166
Order as to separate trial	35	168
Demurrer to complaint	36	168
Judgment on demurrer	48	176
Order entering defendant's plea	50	178
Order granting separate trial	51	178
Order of transfer of cause to another judge	52	179
Motion for assessors	54	180
Motion for continuance of trial	54	180
Second motion for continuance of trial	54	180
Decision of trial court	56	181
Index to testimony	68	188
Proceedings at trial	69	189
Testimony of James Francis Smith	70	189
Dean C. Worcester	85	197
Newton W. Gilbert	123	217
C. P. Shuman	140	225
Santiago Perez	141	226
Justo Lukban	143	227
Pedro Annario	146	228
Felix M. Roxas	149	230
Frederick O'Brien	155	233
Ricardo Aguado	159	235
Jose Maria Romero	161	236
Jose Flameno	164	238
Isidoro Loyzaga	169	241
Charles P. Jarman	172	242
Joaquin Pelliceno Camacho	177	245
Charles P. Jarman (recalled)	185	249
Constantino Caballero	185	249
E. S. Cromwell	190	252
Guillermo Buenaventura	192	253
Estanislao Bernardo	199	257
Antonio Hidalgo	203	259
Rafael Abad	206	260
Quintin Vilar	207	261
Ambrosio Alban	211	263
Jose Flameno (recalled)	223	270
William H. Grant	224	270
Emigdio Octaviano	225	271
Enrique Altavas	232	275
L. Elzingre Dumas	234	276

	Original.	Print
Testimony of Thomas Cary Woods	238	278
Pedro Piconell	240	279
Manuel Ravago	240	280
Guy S. Lane	256	287
Jose Maria Romero y Salas	259	289
Miguel Velasco	272	296
Pablo B. Herrera	274	298
Ricardo Aguado	276	297
Joaquin Pellicena Camacho (recalled)	281	300
Fernando Maria Guerrero	289	302
David P. Barrows	295	307
Arcadio Arellano	299	309
Vicente Rodriguez	303	311
N. M. Saleeby	305	312
W. H. Clarke	309	314
Pablo B. Herrera (recalled)	312	316
Mateo Carantes	317	319
Lucio Almasan	327	324
Vicente Balpiedad	331	326
Carlos Ambas	341	331
Teodoro M. Kalaw	343	332
T. R. Flack	362	342
E. S. Cromwell (recalled)	363	342
David P. Barrows (recalled)	366	344
N. M. Saleeby (recalled)	367	344
Geo. P. Ahern	367	345
A. O. Zinn	369	345
Charles H. Sleeper	372	347
George H. Guerdrum	381	352
M. A. Clarke	385	354
Charles M. Conner	388	355
Dean C. Worcester (recalled)	390	357
Reporter's certificate	410	366
Plaintiff's Exhibit A—Editorial entitled "Birds of Prey," published in the newspaper "El Renacimiento," October 30, 1908	411	366
B—Article published by the newspaper "El Renacimiento" in its gossip column, October 27, 1908	413	368
C—Article published in the newspaper "El Renacimiento," October 26, 1908	414	368
E—Letter of Conner to Lack & Davis, October 20, 1908	416	370
F—Cartoon	417	370
G—Lease application of E. L. Worcester	418	370
H—Report of Hastings to Worcester, September 15, 1904	420	371
Defendants' Exhibit 11—Article published in the newspaper "Cable-News American," October 23, 1908	423	372
12—Letter of Conner to Aguado, July 18, 1908	426	374

	Original.	Print
Defendants' Exhibit 13—Article published in the newspaper "El Mercantil," October 23, 1908	427	374
14—Letter of Conner to Flameno, July 11, 1908	430	376
15—Article published in the newspaper "El Comercio," October 24, 1908	431	376
16—Excerpt from the minutes of the municipal board, October 22, 1908	435	379
17—Letter of Conner to collector, October 20, 1908	436	380
17a—Permit of collector, October 20, 1908	437	380
18—Letter of Worcester to Robb, September 15, 1908	438	381
19—Order of the court of land registration, April 20, 1907	439	381
20—Certified copy of file number 102,572-a142	443	383
Petition of Flameno *et al*	444	383
Endorsement of Governor-General Smith	446	385
Endorsement of Secretary Worcester	446	386
Letter of Secretary Worcester, November 13, 1908	449	387
21—Certified copy of rules and regulations for the inspection and shipment of live stock	452	389
22—Excerpt from the minutes of the municipal board of April 10, 1908	457	392
23—Excerpt from the minutes of the municipal board of August 5, 1908	458	393
24—Letter to acting secretary of the municipal board, April 20, 1908	459	393
25—Traveling-expense vouchers	461	393
26—Letter of Acting Secretary Lane to city assessor, April 11, 1908	478	394
27—Rules and regulations for the inspection and shipment of live stock	479	394
28—Amendment to general order No. 10	483	397
Clerk's certificate	485	398
Case docketed in Supreme Court	a	399
Decision by Johnson, J	1	399
Exception	73	436
Motion for rehearing	74	437
Judgment	79	440

	Original.	Print
Exceptions	81	441
Order on exceptions, &c	82	441
Petition for writ of error	83	442
Assignment of errors	85	443
Decision denying writ of error	92	446
Exception to decision	93	446
Motion for time to apply to Supreme Court of the United States for writ of error	94	447
Order granting time to apply to Supreme Court of the United States for writ of error	95	447
Petition for writ of error	96	448
Assignment of errors	104	453
Writ of error	109	456
Citation and service	111	457

a THE UNITED STATES OF AMERICA,
Philippine Islands.

In the Supreme Court of the Philippine Islands.

Supreme Court File, No. 5527.

THE UNITED STATES, Plaintiff and Appellee,
versus
MARTIN OCAMPO et al., Defendants, MARTIN OCAMPO, TEODORO M. KALAW, and FIDEL A. REYES, Appellants.

For Libel.

Separate Trial of Martin Ocampo.

Certified Copy of Proceeding Had in the Court of First Instance for the City of Manila in the Above-entitled Cause.

1 UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the City of Manila.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Information Libel.

The undersigned accuses Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar of the crime of Libel, committed as follows:

That on or about the 30th day of October, 1908, the said Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, and each of them, were the editors, proprietors, owners, directors, writers, managers, administrators, printers and publishers, in the City of Manila, Philippine Islands, of a certain daily newspaper, known as "El Renacimiento"; that said newspaper was, on and about the 30th day of October, 1908, printed, edited, published and circulated daily by said defendants and each of them, in both the Spanish and Tagalog languages in the City of Manila, Philippine Islands; that on and about the 30th day of October, 1908, in the City of Manila, Philippine Islands, the said Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, and each of them, as editors, proprietors, owners, directors, administrators, writers, managers, printers and pub-

lishers of the said newspaper, "El Renacimiento," in the
2 City of Manila, Philippine Islands, did then and there wilfully, unlawfully, feloniously, and with malicious intent to injure one Dean C. Worcester, who was at that said time, and still is, a member of the Philippine Commission, and Secretary of the Interior of the Philippine Islands, and with the malicious intent to impeach the honesty, virtue and reputation of the said Dean C. Worcester, both as a man and as an official of the Government of the Philippine Islands, and to expose the said Dean C. Worcester to public hatred, contempt and ridicule, write, edit, print, publish and circulate, and cause to be written, edited, printed, published and circulated in a regular daily issue of said newspaper, "El Renacimiento," of the date of October 30th, 1908, of and concerning the said Dean C. Worcester, a certain false, injurious and malicious defamation and libel, tending to impeach the honesty, virtue and reputation of the said Dean C. Worcester, and expose him, the said Dean C. Worcester, to public hatred, contempt and ridicule; that the said libel was printed, published and circulated in the Spanish language was as follows:

MANILA, 30 *de Octubre de* 1908.

Editorial.

Aves de Rapiña.

En la extensión del globo, unos han nacido para comer y devorar, otros para ser comidos y devorados.

Una y otra vez, estos últimos se han agitado, tratando de rebelarse contra un orden de cosas en que son presa y pasto para la verocidad insaciable de los primeros. Alguna vez han tenido suerte ahuyentando lejos á los comedores y devoradores, pero en la mayor
3 parte de las veces no se ha conseguido más que un cambio de nombre ó de plumaje.

En todas las esferas de la creación, la situación es la misma, la relación entre unos y otros es la que dictan el apetitoy la fuerza para saciarlo á costa del prójimo.

Entre los hombres, es facilísimo observar el desarrollo de este fenómeno diario. Y por alguna rason psicológica los pueblos que se creen poderosos han tomado por emblema las criaturas más fieras y más dañinas: ora es el leon, ora el aguila ó la serpiente. Unos lo han hecho por un secreto, impulso de afinidad, otros por efecto de una simulación, de vanidades infatuadas aparentando lo que no son ni pueden ser jamás.

El águila, simbolizando libertad y fuerza, es el ave que ha encontrado más adeptos. Y los hombres, colectiva ó individualmente han querido copiar é imitar al ave más rapaz, para triunfar en el saqueo de sus semejantes.

Hay hombres que, ademas de ser águilas, reunen en si las caracteristicas del buitre, del buho y del vámpiro.

Subiendo á las montañas de Benguet para clasificar y medir

cráneos de igorrotes y estudiarlos y civilizarlos y sorprender al vuelo, con ojo de ave de rapiña, donde se encuentran los grandes yacimientos del oro, la presa oculta entre los montes solitarios, para apropiárselos después gracias a facilidades legales hechas y deshechas al antojo, pero siempre en beneficio propio.

Autorizando á despecho de leyes y ordenanzas una matanza ilegal de ganado enfermo, para sacar beneficio de la carne infecta y podrida que el mismo estaba obligado á condenar en virtud de su posición oficial.

Presentándose en todas las ocasiones con el ceño fruncido del sabio que consume su vida en los misterios del laboratorio de ciencia, cuando toda su labor científica se reduce á desecar insectos é importar huevas de peces como si los peces de este país fueran menos nutritivos y menos ricos, de tal modo que valiera la pena de sustituirlos con especies venidas de otros climas.

Dan un impulso admirable al descubrimiento de veneros de riqueza en Mindoro, en Mindanaw y demás puntos vírgenes del Archipiélago con el dinero pueblo y con el pretexto de bien público, cuando en rigor se trata de poseer todos los datos y la clave de la riqueza nacional en provecho personalísimo como se demuestra por la adquisición de inmensas propiedades registradas con nombres ajenos.

Promoviendo por medio de agentes y consocios secretos la venta á la ciudad de terrenos sin valor por cantidades fabulosas que los padres de la ciudad no se atreven á rehusar por el temor de disgustar á quien va detrás de la moción, y que no rehusan por lo que les conviene.

Patrocinando la concesión de hoteles en sitios terraplenados con la perspectiva de enormes utilidades, á expensas de la sangre del país.

Tales son las características del hombre que es á la vez águila que sorprende y devora, buitre que se solaza en las carnes muertas y putrefactas, búho que aparenta una omnisciencia petulante y vampiro que chupa en silencio la sangre de la víctima hasta dejarla exangüe.

Estas aves de rapiña son las que triunfan. Su vuelo y su dirección jamás se ven detenidos.

¿Quién los detendrá?

Unos participan del botín y del saqueo. Otros son tan débiles para levantar la voz de protesta. Y otros mueren en la desconsoladora destrucción de sus propias energías é intereses.

Y entonces surge, terrorífica, la leyenda inmortal:

Mane, Tecel, Phares."

and a translation thereof into the English language is as follows:

"MANILA, *October 30th*, 1908.

Editorial.

Birds of Prey.

On the surface of the globe some were born to eat and devour, others to be eaten and devoured.

Now and then the latter have bestirred themselves, endeavoring to rebel against an order of things which makes them the prey and

food of the insatiable voracity of the former. At times they have been fortunate, putting to flight the eaters and devourers, but in the majority of cases they did not obtain anything but a change of names or plumage.

The situation is the same in all the spheres of creation: the relation between the ones and the others is that dictated by the appetite and the power to satisfy it at the fellow-creature's expense.

Amongst men it is very easy to observe the development of this daily phenomenon. And for some psychological reason the nations who believe themselves powerful have taken the fiercest and most harmful creatures as emblems: it is either the lion, or the eagle, or the serpent. Some have done so by a secret impulse of affinity and others in the nature of simulation, of infatuated vanity, making themselves appear that which they are not nor ever can be.

The eagle, symbolizing liberty and strength, is the bird that has found the most adepts. And men, collectively and individually, have desired to copy and imitate the most rapacious bird in order to triumph in the pillaging of their fellow-men.

There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire.

Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

Authorizing, despite laws and ordinances and illegal
5 slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of the public good, when, as a strict matter of truth, the obect is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people.

Such are the characteristics of the man who is at the same time

an eagle who surprises and devours, a vulture who gorges himself on dead and putrid meats, an owl who affects a petulant omniscience and a vampire who silently sucks the blood of the victim until he leaves it bloodless.

It is these birds of prey who triumph. Their flight and their aim are never thwarted.

Who will detain them?

Some share in the booty and the plunder. Others are too weak to raise a voice of protest. And others die in the disconsolating destruction of their own energies and interests.

And then there appears, terrifying, the immortal legend:

Mane, Tecel, Phares."

That the said newspaper, "El Renacimiento," in the said issue the 30th day of October, 1908, had as the defendants well knew, a large circulation in the City of Manila and throughout the provinces of the Philippine Islands, in all of which the Spanish language is both read and spoken; that the said Dean C. Worcester was, at the time of said publication, and is now, well known by the officials of the Government of the Philippine Islands, and by the in-
6 habitants of the City of Manila, and by the people of the provinces of the Philippine Islands, and the public generally, not only personally but as a member of the Philippine Commission, and as Secretary of the Interior of the Philippine Islands. That the defamation and libel, and the words, terms and language used in said defamation and libel, as follows:

"Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to copy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices, which the city fathers dare

not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people."

were all intended by said defendants to refer to and mean the said Dean C. Worcester, and would be understood and were under-
7 stood by the officials of the Government of the Philippine Islands, the inhabitants of the City of Manila, and the people of the Philippine Islands generally, to refer to and mean the said Dean C. Worcester, for the reason that it is a matter of common knowledge that the said Dean C. Worcester, in the performance of his duties as such member of the Philippine Commission and as such Secretary of the Interior of the Philippine Islands, has heretofore ascended to the mountains of the province of Benguet in order to make a study of the native tribe known as the Igorots, who reside there; for the reason that it is a matter of general knowledge that there are large deposits of gold in said mountains of Benguet, and for the reason that, as a member of the Philippine Commission, which is the law-making body of said Philippine Islands, the said Dean C. Worcester has taken, and does take part in the making and repeal of the laws of said Philippine Islands; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has had under his supervision and control the enforcement of the laws of the Philippine Islands and the Ordinances of the City of Manila regarding the slaughtering of cattle; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has supervision and control of the Bureau of Science of the Government of the Philippine Islands, and is himself generally known as a man devoted to the study of science; and for the further reason that it is a matter of
8 general knowledge that the said Dean C. Worcester in his capacity as such Secretary of the Interior of the Philippine Islands, has heretofore caused to be imported into the Philippine Islands fish eggs, for the purpose of stocking the mountain springs of said Philippine Islands; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has made journeys and explorations in the Islands of Mindoro, Mindanao, and in other regions of the Philippine Archipelago; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, at one time investigated and made a report to the Philippine Commission regarding the proposed purchase of a certain piece of land by the City of Manila; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, as a member of said Philippine Commission, along with the other members of said body, has heretofore been in negotiation with a certain hotel company in regard to the location

of a proposed hotel on some of the filled-in lands of the City of Manila.

That the said defendants intended to and did charge the said Dean C. Worcester with prostituting his office as a member of the Philippine Commission and as Secretary of the Interior of the Philippine Islands, for private ends; with squandering the public funds for the purpose of promoting his personal welfare; with violating the laws of the Philippine Islands and the Ordinances of the City of Manila; with entering into illegal combinations for the purpose of robbing the people, with the intent of gain to himself and certain other individuals; and that the said defamation would be and was so understood by the inhabitants of the City of Manila, the officials of the Government of the Philippine Islands, and the people of the Philippine Islands generally, to accuse the said Dean C. Worcester of the conduct and acts and things above set forth, and to state and publish by innuendo and inference that he, the said Dean C. Worcester, was guilty of said acts, deeds and doings; all of which allegations regarding the character and conduct of the said Dean C. Worcester, as above set forth, were and are false and without foundation in fact.

That the said defamation and libel was published by the defendants, and each of them, as aforesaid, wilfully and maliciously, under large and conspicuous headlines, and every effort made on the part of said defendants, and each of them, to insure that said defamation and libel attract the attention of and be read by all the subscribers and readers of the said newspaper, "El Renacimiento," and to give the said defamation and libel the widest — possible.

All contrary to the statute in such cases made and provided.

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Subscribed and sworn to before me, this 5th day of November, 1908, in the City of Manila, Philippine Islands, by L. M. Southworth, Acting Prosecuting Attorney for the City of Manila.

CHAS. H. SMITH,
Judge Court of First Instance.

A preliminary investigation has been conducted under my direction, having examined the witnesses under oath, in accordance with the provisions of Section 39 of Act 183 (Manila Charter), as amended by Section 2 of Act 612 of the Philippine Commission.

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Subscribed and sworn to before me, this 5th day of November, 1908, in the City of Manila, Philippine Islands, by L. M. Southworth, Acting Prosecuting Attorney for the City of Manila.

CHAS. H. SMITH,
Judge Court of First Instance.

Witnesses.	Addresses.
Governor General Jas. F. Smith	Ayuntamiento.
Commissioner Newton W. Gilbert	Ayuntamiento.
Secretary of Finance & Justice Gregorio Araneta	Ayuntamiento.
A. O. Zinn	Ayuntamiento.
Dr. G. E. Nesom	Oriente Building.
B. Lowenstein	No. 34 Plaza Moraga.
11 M. A. Clarke	No. 2, Plaza Moraga.
T. P. Shuman	Past. Office.
Enrique Barrera y Caldes	Not. Pub.
Arcadio Arellano	Maestro de Obras.

Thereafter and on the 5th of November, 1908, the defendants, Ocampo, Kalaw, Aguilar, Reyes and Santos, were duly arrested and turned over to the proper tribunal.

On the same day, November 5, 1908, in open court, the prosecuting attorney of the City of Manila and all of the defendants being present, the complaint against them filed in this case was read to them, and the court allowed them until the 7th of November, 1908, at 8 a. m. to plead thereto. Attorney Ramon Diokno then stated to the court that he appeared in behalf of the defendants and asked that they be furnished with a copy of the complaint, which petition was granted by the court, and a copy of the said complaint was handed to each one of the accused.

Thereafter and on the 7th of November, 1908, the defendants filed the following motion:

12 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Motion.

Now come the defendants, Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, in the above-entitled cause and before demurring to or answering the complaint, to the court respectfully state:

1. That a warrant has been issued in this cause for the arrest of each of the defendants, and that all and each of them have been held to answer for a criminal offense, to-wit: the crime of libel,

without a preliminary investigation having first been held by the court and without any tribunal, judge, magistrate, or any other competent authority, having first determined in accordance with the law now in force, that the alleged crime of libel and been committed and that there was probable cause to believe that all and each of the said defendants were guilty of the crime charged, in violation of sections 12 and 13 of General Order No. 58, issued by the office of the Military Governor of the United States in the Philip-
13 pine Islands on April 23, 1910, and paragraphs 1, 3, 11 and 18 of section 5 of the Philippines Bill, enacted by the Congress of the United States on July 1st, 1902.

2. That section 2 of Act No. 612 of the Philippine Commission, approved February 3, 1903, although it deprives accused persons in the city of Manila of the right to a preliminary investigation, it does not, however, relieve this court of the duty to make the said preliminary investigation as provided in section 13 of the aforesaid General Order No. 58, the provisions of which, upon this subject, still continue in force in the city of Manila.

3. That section 2 of the said Act No. 612, which deprives accused persons in the city of Manila of the right to demand a preliminary investigation, is contrary to the provisions of section 5 of the aforesaid Philippines Bill, for the following reasons:

(*a*) Because it provides that accused persons in the city of Manila may be deprived of their liberty "without due process of law." (Par. 1.)

(*b*) Because it denies to the inhabitants of the city of Manila the legal protection of the judicial preliminary investigation before arrest, as provided in General Order No. 58 which is now in force in the Philippine Islands as to all persons, and in the city of Manila as to all informants and complainants, as well as to the courts, and therefore denies to the defendants the equal protection of the law. (Par. 1.)

(*c*) Because it deprives persons detained in the city of Manila to answer for a criminal offence of the "proper judicial proceedings." (Par. 3.)

14 (*d*) Because it violates the guarantee against arbitrary detention. (Par. 11.)

Wherefore, defendants pray this court to vacate the order of arrest heretofore issued against each of them, directing that they be forthwith discharged from custody and the bond by them given cancelled, and that all further proceedings in this cause be suspended until by a proper judicial proceeding the cause is brought within the jurisdiction of this court to try the same on the merits.

Manila, November 7, 1908.

(S'g'd) FELIPE AGONCILLO,
FERNANDO SALAS,
RAMON DIOKNO,
Attorneys for Defendants.

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Filed on the 7th of November, 1908, at 8.15 a. m.

(S'g'd) FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

15 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Answer to Motion to Dismiss the Information in this Cause.

Now comes the undersigned Assistant Prosecuting Attorney for the City of Manila, and in answer to the Motion of the accused herein to dismiss this Cause, respectfully submits that the same should be overruled, for the following reasons, to-wit:

(1) Because the Information shows upon its face that a preliminary examination was held upon the charge alleged in said Information, by the Prosecuting Attorney, in accordance with Act 612 of the Philippine Commission.

(2) Because there is no law in the Philippine Islands requiring the Judges of the Courts of First Instance of the City of Manila to hold preliminary investigations in criminal causes, and issue orders of probable cause, where the Prosecuting Attorney, after due investigation of the facts, as in this case, has presented an Information against the accused, in proper form.

(3) Because the accused have waived any rights which
16 they may have had to object to any defects or irregularity in the warrants or arrest, by appearing before the Court and giving bond for their several appearance before said Court at a subsequent day of the term, to answer to the Information against them.

It is therefore respectfully submitted that the Motion should be overruled, and the defendants required to plead to the Information.

———,
Assistant Prosecuting Attorney.

17 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Order on Motion of Defendant for Further Time in Which to Present Arguments in Support of Motion to Quash Complaint and Warrant.

At 8 o'clock in the morning of the 7th day of the present month, two days after the reading of the information in this case, a motion was presented on behalf of the defendants that the warrant and information be quashed, based upon two reasons: (1) That the preliminary investigation prescribed by law had not been practiced in this case; and (2) That no specific finding as to probable cause had been made by the court.

At that time counsel were advised by the court that the decision upon said motion would be rendered at this hour, to wit, at 8 o'clock in the morning on the 10th day of November. Defendants' counsel were specifically advised by the court that if they cared to submit any arguments in support of said motion the same should be presented in writing during the day, to wit, the 7th day of November. Up to the time fixed for the decision, as aforesaid, to wit, the 10th day of November, no arguments in writing in support of said motion have been submitted by defendants' counsel. This branch

18 of the court is occupied, and it would be unjust to postpone the *the* decision of the court longer, both to the defendants and to other persons interested in the disposition of their cases in this branch of the court. The court has carefully considered this motion. Both the propositions urged in the motion have been considered in a most studious manner by the Honorable Supreme Court of the Philippine Islands in the case of the United States vs. Wilson, the decision of which is reported in the 4th volume of the Philippine Reports. It is not a question, therefore, of the opinion which the presiding judge here now might have, but it is his duty to follow and be governed by the interpretation of the law promulgated by the Honorable Supreme Court.

Upon considering said motion for further time within which to present arguments in support of said motion to quash, and the court having granted to defendants' counsel an opportunity to present oral arguments in support of said motion at the time fixed for the decision of the court thereon, and defendants' counsel having declined

to avail themselves of the aforesaid privilege to present such oral arguments, it is ordered that said motion be denied.

Manila, P. I., November 10, 1908.

(S'g'd) CHAS. H. SMITH, *Judge.*

I hereby certify that the above decision was on this date, November 10, 1908, dictated in the presence of all the accused accompanied by their attorneys, and that they accepted notice of same at the time together with an oral exception thereto.

(S'g'd) FELIPE BUENCAMINO, JR.,
Act'g Ass't Clerk.

19 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Judgment on Motion to Quash.

The information was presented in this case on the 5th day of November, 1908, and was accompanied, as shown by the files in this case, by two affidavits of Mr. L. M. Southworth, assistant prosecuting attorney of the city of Manila, in the first of which the said prosecuting attorney swears to said information, and in the second of which the said official swore that he had practiced the preliminary investigation in the office of the prosecuting attorney of the city of Manila prescribed by section 39 of Act No. 183 of the Honorable Philippine Commission, being the charter of the city of Manila, as amended by section 2 of Act No. 612 of said Commission. Said affidavits were signed and sworn to before the judge presiding over the criminal branch of this court. A warrant was thereupon issued for the arrest of the defendants who, in pursuance of said warrant, were brought into the court on the same day, the said information was read to them and they were allowed until the morning of the 7th day of November to plead thereto. At the
20 conclusion of the reading of said complaint the defendants with the assistance of their counsel all presented a bail bond in the sum of one thousand pesos each, and were then released from custody, being ordered to return to court the morning of the said seventh day of November. At the time last before mentioned the defendants with their counsel all appeared in court and presented in writing a motion to quash the proceeding herein, which motion is

based upon two propositions: (1) That the preliminary investigation required by law has not been practiced in this court; (2) That no specific order has been issued by the court in which it has been determined that the crime complained of has been committed and that there is reasonable ground to believe that the parties charged have committed such crime.

1. The charge in this case is a violation of the provisions of chapter 297 of the compiled laws of the Philippine Commission. The punishment prescribed for such violation is "a fine of not exceeding four thousand pesos, or imprisonment not exceeding one year, or both," so that the case is only triable in this court. Section 13 of General Order No. 58 (being section 3261 of the compiled laws) provides that:

"When a complaint or information alleging the commission of a crime is laid before a magistrate, he must examine, on oath, the informant or prosecutor and the witness produced, and take their depositions in writing, causing them to be subscribed by the parties making them. If the magistrate be satisfied from the investigation that the crime complained of has been committed, and that there is reasonable — to believe that the party charged has committed it, he must issue an order for his arrest. If the offense be bailable, and the defendant offer a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison."

21 This law was promulgated during the military government of the Philippine Islands under American sovereignty, and after the establishment of the civil government here and the volume of business in this court was found to be substantially larger than was anticipated, the law hereinbefore mentioned was enacted by the Honorable Philippine Commission to furnish relief to this court in the city of Manila. Thereupon such relief was provided by means of Act No. 612 of said Commission, the second section of which, so far as the same is applicable to this case, is as follows:

"In cases triable in the Court of First Instance of the city of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the Prosecuting Attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment, shall have presented an information against him in proper form: Provided, however, That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable."

The validity of this law and the sufficiency of the provisions thereof in the matter of criminal procedure treated therein were submitted to and considered by the Honorable Supreme Court of the Philippine Islands in a very able decision of that court in the case entitled "United States, complainant, vs. William A. Wilson, defendant," reported in volume 4 of the Philippine Reports, English Edition, at page 317, etc. In a very studious examination of said last mentioned case, the Honorable Supreme Court determined that a preliminary investigation conducted by the prosecuting attor-

ney of the city of Manila or his assistants, in pursuance
22 of the provisions of such section 2 of said Act No. 612, was sufficient to meet the requirements of the law operative in the Philippine Islands in the matter of preliminary investigations, and that no further investigation is now required to be made by the magistrate, who in the city of Manila is the trial judge.

It appears of record in the case at bar that the assistant prosecuting attorney of the city of Manila has practiced in the office of the prosecuting attorney of said city the preliminary investigation required by law. This is shown by his sworn statement annexed to said information and sworn to by him before the trial judge here. Under these circumstances and being governed by the rule promulgated by the Honorable Supreme Court of the Philippine Islands in the said Wilson case, the court must and does overrule said motion as to the said first proposition.

2. A specific separate order of the court as to probable cause, etc., is no longer required by law in criminal causes (felonies) instituted in this court (city of Manila). The practice prescribed in said section of General Order 58 was only required in cases in which the preliminary investigations therein were conducted by the trial judge or magistrate; in fact, said section of general order No. 58 does not provide that a written order *of* this end must be made by such magistrate. However, as to the city of Manila, said practice has been entirely substituted by section 2 of said Act No. 612. The
23 prosecuting attorney of the city of Manila, according to the provisions of section 486 of the compiled laws (section 39 of Act No. 183 of the Commission), is a judicial officer, having full authority to make preliminary investigations and present informations in all criminal cases, and when he as such officer presents in court an information sworn to by him accompanied by an affidavit that he has practiced the preliminary investigation required by law, in pursuance of said Act No. 612, and takes such oaths before the magistrate, who is the judge presiding over this (criminal) branch of the court, probable cause, supported by oath or affirmation, appears of record in the case. In reality at the time of the presentation of said information, together with said affidavits, the trial judge (magistrate) considered and determined that probable cause, etc., had been shown. The issuance of the warrant signed by the same magistrate or trial judge must be considered as a determination on the part of the court or magistrate as to probable cause, etc., if such a determination is now necessary under the amended laws applicable to this feature of the case. Through the assistance of defendants' counsel a bail bond was provided by them and approved by the court at the time of the reading of the complaint, and one and one-half days before the presentation of this motion. Under the rule laid down in text books and in the American and English Encyclopedia of Law, the questions raised in said motion are unseasonable.

In the said Wilson case, the Honorable Supreme Court considered this very question, and there not appearing in the
24 record a specific order of the trial judge (magistrate) as — the probable cause, the Supreme Court held that the same is not

now an indispensable legal step in a criminal cause instituted in this court (city of Manila).

During the last two years it has been impossible to conduct preliminary investigations before the judge (magistrate) presiding over this criminal sala, and it has not been considered necessary, in view of the doctrine promulgated by the Honorable Supreme Court of the Philippine Islands in the said Wilson case. The rule of procedure approved and settled in the said last mentioned case has been followed by all the judges presiding over this branch of the court, and very properly so in view of the great magnitude of business pressed upon the court for its attention.

Following and being governed by the interpretation of the law as found in the said decision of the Honorable Supreme Court of the Philippine Islands, this court must and does overrule the said motion as to said second proposition.

It is therefore ordered that said motion be denied, and that the defendants each and all plead to said information forthwith.

Manila, P. I., November 10, 1908.

(S'g'd) CHAS. H. SMITH, *Judge.*

I hereby certify that all the accused accompanied by their attorneys accepted notice of the above decision on the 10th of November 1908, in open court.

(S'g'd) FELIPE BUENCAMINO, JR.,
Act'g Ass't Clerk.

25 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Exception.

The defendants hereby except to the order of the court of this day overruling their motion of the 7th instant.

Manila, November 10th, 1908.

(S'g'd) FELIPE AGONCILLO,
FERNANDO SALAS,
RAMON DIOKNO,
Attorneys for Defendants.

Filed this 10th day of November, 1908, at 8.30 a. m.

(S'g'd) FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

26 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES
vs.
MARTIN OCAMPO et al.

Libel.

I hereby certify, with the approval of the judge presiding over this section of the court, that the defendants in this case, through their attorneys, at the time their motion to dismiss the complaint in this case was overruled, objected thereto and respectfully excepted to any further action on the part of the court or any further proceedings which might be had in said cause.

(S'g'd) FELIPE BEUNCAMINO, JR.,
Acting Assistant Clerk.

27 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Motion.

Now come Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, the defendants in the above-entitled cause, and without waiving any of the objections by them raised in their motion of the 7th instant, and the exception by them taken to the order of this court denying the same, and which they now reproduce in all its parts, respectfully ask the court that there be submitted to this court and to them for examination the proceedings of the preliminary investigation alleged to have been conducted by the acting prosecuting attorney of the city of Manila, and that until the accused have fully examined the said proceedings, they be not compelled to demur or answer to the complaint.

This petition is based upon the following grounds:

1. That the said preliminary investigation is the basis of the

complaint and should show the nature, character and origin of the accusation.

28 2. In that all and each of the accused have a right to be fully informed of the nature, character and origin of the accusation against them before they can demur or answer to the complaint, in conformity with the provisions of section 5, paragraph 2, of the Philippines Bill, approved July 1st, 1902, by the Congress of the United States, and section 15, paragraph 2, of General Order No. 58, issued April 23, 1900, by the Office of the Military Governor of the United States in the Philippine Islands.

Manila, November 10, 1908.

(S'g'd) FELIPE AGONCILLO,
FERNANDO SALAS,
RAMON DIOKNO,
Attorneys for Defendants.

Filed November 10, 1908, at 8.45 a. m.

(S'g'd) FELIPE BEUNCAMINO, JR.,
Acting Assistant Clerk.

29 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Judgment on Motion.

A motion is presented in this case by defendants' counsel for an order of the court requiring the prosecuting attorney to place before the court, and the defendants, the whole of the preliminary investigation conducted in this case in the office of the prosecuting attorney.

1. The charge in this case is libel; violation of Act No. 277 of the Philippine Commission. The published article complained of is set out in full in the information, so that no one can be misguided or deceived as to the character of the crime complained of.

2. The prosecuting attorney of the city of Manila is by the law governing that office, a judicial officer. His duties in the matter of preliminary investigation are prescribed by law, to wit, Act No. 612 of the Honorable Philippine Commission; likewise section 486 of the compiled laws of the Philippine Islands. His duties are separate

and distinct from those of the court. In each of these two branches of the judiciary there are plain limitations prescribed by law. The court has grave doubt, upon the refusal of the prosecuting at-
30 torney to present such information in compliance with the order of the court, that said prosecuting attorney could be punished for a violation of the order of the court.

3. The que-tion submitted in this motion was clearly settled in the case of the United States vs. Wilson, reported in the 4th volume of the Philippine Reports. The rules promulgated in that case must gove-n this court in the application of the law here now. Besides this, no showing has been made, and it has not been claimed, that the prosecuting attorney has refused to give the information sought, upon application therefor.

4. If the motion presented at this time could have merit at any stage of the case, it is inopportune now.

The motion is therefore denied and the defendants ordered to plead.

Manila, P. I., November 10, 1908.

(S'g'd) CHAS. H. SMITH, *Judge.*

I hereby certify that the above decision was dictated in the presence of all the accused accompanied by their attorneys, and that they accepted notice of same at the time.

(S'g'd) FELIPE BUENCAMINO, JR.,
Act'g Ass't Clerk.

To the foregoing judgment defendants, through their attorneys, duly excepted in writing, November 10, 1908.

31 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
TEODORO M. KALAW, FIDEL A. REYES, LOPE K. SANTOS, FAUSTINO AGUILAR, and MARTIN OCAMPO, Defendants.

Libel.

Motion.

Now come Teodoro M. Kalaw, Fidel A. Reyes, Lope K. Santos, Faustino Aguilar and Martin Ocampo, the defendants in the above entitled cause, and respectfully ask this court to hold a preliminary investigation in this cause before the said accused either demur to or answer the complaint.

This motion is based upon the provisions of General Order No. 58 and section 5 of the Philippines Bill and other laws of the Com-

mission, which grant an accused person in a criminal cause the right to a preliminary investigation, and also upon the ground that the provisions of section 2 of Act No. 612 which deny to accused persons in the city of Manila such right are null and contrary to the Constitution of the United States, the same being in violation of the provisions of said section 5 of the Philippines Bill, paragraphs 1, 3, 11 and 18.

Manila, P. I., November 12, 1908.

(S'g'd) FELIPE AGONCILLO,
FERNANDO SALAS,
RAMON DIOKNO,
Attorneys for Defendants.

R'c'd Copy.

L. M. SOUTHWORTH,
Ass't Pros. Attorney.

32 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Judgment on Motion of Defendants' Counsel for an Order of the Court Requiring at this Time that a Preliminary Investigation Be Conducted by the Court.

The defendants are all present in court; likewise their counsel, and counsel for the government.

The information was read in this cause on the 5th day of November, at which time the defendants were ordered to appear in court on the morning of the 7th of November to plead to said complaint. On the morning of November 7th, a motion was presented by defendants' counsel for an order of the court quashing the complaint and warrant filed and issued in this cause, upon two certain reasons stated therein. An adjournment was then ordered by the court to the morning of the 10th day of the present month, for the purpose of considering said motion and rendering a decision thereon. On the morning of the 10th day of November defendants with their counsel appeared in court, at which time the government was represented by the prosecuting attorney and his assistant, Mr. Southworth. Said motion was then and there overruled.

33 Immediately following said decision a motion was presented by defendants' counsel for an order of the court requiring

the prosecuting attorney to present and exhibit in this case the preliminary investigation practiced in the office of the prosecuting attorney, in pursuance of the provisions of Act No. 612 of the Honorable Philippine Commission, which motion was denied, being founded upon the rule promulgated in the case of the United States against Wilson, reported in the 4th Volume of Philippine Reports. Defendants' counsel then requested further time within which to present a demurrer to said complaint, and for nothing more. This application was granted and the defendants were ordered to appear in court at this time, to wit, nine o'clock A. M., November 12, 1908, for the presentation of said demurrer, as the only further dilatory plea, and then to answer to said complaint.

At the last mentioned time, to wit, nine o'clock A. M., November 12, 1908, defendants' counsel now present a motion for an order of the court authorizing and directing that a preliminary investigation be now conducted in this case.

Considering the foregoing proceedings in this case, and the order of the court issued therein, together with the provisions of Act No 612 of the Honorable Philippine Commission, as interpreted by the Honorable Supreme Court in said case of the United States vs. Wilson; and, no showing having been made of any special reason why a preliminary investigation should be conducted by the court at this time, and this criminal branch of the court being occupied
34 with the consideration of a substantial volume of business, and the charge in this case being criminal libel, the article complained of being set out in full in the information, it is ordered that said motion be denied, and that the defendants plead to said complaint forthwith.

Manila, P. I. November 12, 1908.

CHAS. H. SMITH, *Judge.*

I hereby certify that the above decision was rendered by the Court in the presence of all the accused accompanied by their counsel, and that they accepted notice fit at the time.

FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

To the foregoing order defendants, through their attorneys, duly excepted in writing, November 12, 1908.

Thereafter and on the 12th of November, 1908, each of the defendants in the above-entitled cause filed a motion in the Court of First Instance for a separate trial under the provisions of section 33 of General Order No. 58.

35 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for Manila, Sala I.

Criminal Cause No. 4295.

THE UNITED STATES
vs.
MARTIN OCAMPO et al.

Libel.

Order.

Upon reading and considering the motion filed by each one of the accused in this cause, asking for a separate trial, the Court orders that the determination of each one of said motions be suspended until the completion of the arraignment in this cause.

It is so ordered.

Manila, P. I., November 12, 1908.

(Sgd.) CHAS. H. SMITH, *Judge.*

I hereby certify that the above order was rendered by the Court in the presence of all the accused accompanied by their attorneys, and that notice of it was by them accepted at the time.

(Sgd.) FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

36 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Demurrer.

Now comes the defendant Martin Ocampo, and, through his attorneys, hereby demurs to the complaint upon the following grounds:

I.

That the court has no jurisdiction of the offence charged in the complaint.

(A) The preliminary investigation as to a person accused of crime is essential in order to authorize proceedings against such person by information or complaint.

Encyc. of Pl. & Prac., Vol. 16, pp. 821-822.

This doctrine is supported by a large number of decisions which are cited below:

California:

People v. McCurdy, 68 Cal. 576;
People v. Van Horn, 119 Cal. 323;
People v. Kilvington, (Cal. 1894) 36 Pac. Rep. 13;
People v. Sherman, (Cal. 1893) 32 Pac. Rep. 879;
Ex parte Baker, 88 Cal. 84.
People v. Bawden, 90 Cal. 195;
People v. Goldenson, 76 Cal. 328;
People v. Tarbox, 115 Cal. 57;
Ex parte Walpole, 85 Cal. 382;
Kalloch v. Superior Ct. 56 Cal. 229;
People v. Barnes, 66 Cal. 594.

37 Colorado:

Ratcliff v. People, 22 Colo. 75;
Holt v. People, 23 Colo. 1.

Idaho:

State v. Braithwaite, 2 Idaho 857;
State v. Clark (Idaho 1894) 35 Pac. Rep. 710.

Indiana:

Simmons v. Vandyke, 138 Ind. 380;
Johns v. State, 104 Ind. 557.

Kansas:

State v. Reedy, 44 Kan. 190;
State v. Woods, 49 Kan. 237;
State v. Gleason, 32 Kan. 245;
State v. Montgomery, 8 Kan. 351;
State v. Nulf, 15 Kan. 404;
State v. Barnett, 3 Kan. 250; 87 Am. Dec. 471;
Matter of Shurman, 40 Kan. 533.

Kentucky:

Osborn v. Com., 14 Ky. L. Rep. 246, (Ky. 1892) 20 S. W. Rep. 273.

Louisiana:

State v. Recorder, 42 La. Ann. 1091;
Macarty's Case, 2 Martin (La.) 269.

Massachusetts:

Com. v. Tobin, 108 Mass. 426;
Phillips v. Fadden, 125 Mass. 198;
Papineau v. Bacon, 110 Mass. 319.

Michigan:

People v. Jones, 24 Mich. 215;
Brown v. People, 39 Mich. 37;
People v. Kuhn, 67 Mich. 463;
People v. Brock, 64 Mich. 691;
People v. Evans, 72 Mich. 367;
Swart v. Kimball, 43 Mich. 443;
Washburn v. People, 10 Mich. 372;
People v. Chapman, 62 Mich. 280;
O'Hara v. People, 41 Mich. 623;
People v. Wright, 89 Mich. 70;
People v. McKinney, 10 Mich. 93;
Turner v. People, 33 Mich. 363;
Sneed v. People, 38 Mich. 248;
Stuart v. People, 42 Mich. 257.

38 Montana:

State v. Brett, 16 Mont. 360.

Nebraska:

White v. State, 28 Neb. 341;
Latimer v. State, 55 Neb. 609;
Coffield v. State, 44 Neb. 617;
White v. State, 28 Neb. 341.

New Hampshire:

State v. Tompson, 20 N. H. 250;
State v. Gilton, 32 N. H. 285;
State v. Stevens, 36 N. H. 59.

New York:

Pratt v. Hill, 16 Barb. (N. Y.) 303;
Matter of Ramsear, 1 N. Y. Crim. Rep. 33;
People v. Drury, 2 Edm. Sel. Cas. (N. Y.) 351;
Green v. Kennedy, 46 Barb. (N. Y.) 16.

North Dakota:

State v. Hasledahl, 3 N. Dak. 36.

Pennsylvania:

Com. v. Groff, 8 Lanc. L. Rev. (Pa.) 267;
Matter of Memorial of Citizens' Assoc., 8 Phila. (Pa.) 478.

Tennessee:

Touhey v. King, 9 Lea (Tenn.) 422;
State v. McCoy, 1 Baxt. (Tenn.) 111.

Texas:

State v. Miller, 31 Tex. 565.

Vermont:

Whitcomb v. Cook, 38 Vt. 477.

Virginia:

Jackson v. Com., 23 Gratt. (Va.) 919;
Butler v. Com., 81 Va. 159;
Hurd v. Com., 5 Leigh (Va.) 715;
Forde v. Com., 16 Gratt. (Va.) 547;
Com. v. Myers, 1 Va. Cas. 188;
Com. v. Linton, 2 Va. Cas. 205.

West Virginia:

State v. Strauder, 8 W. Va. 686.

Wisconsin:

State v. Sorenson, 84 Wis. 27;
In re Burkhardt, 33 Fed. Rep. 25;
Martin v. State, 79 Wis. 165.

Wyoming:

State v. Krohno, 4 Wyoming, 347.

39 United States:

U. S. v. Shepard, 1 Abb. (U. S.) 431;
Ex p. Bollman, 4 Cranch (U. S.) 75.

In one of the aforesaid decisions the following was held:

"Until the examining magistrate has determined that an offense, not cognizable by a justice of the peace, has been committed, and that there is probable cause to believe the respondent guilty thereof, and has so certified to the circuit court, the prosecuting attorney has no authority to file an information, and a return by order of the court, made after such filing, will not give the court jurisdiction to proceed on said information." (People v. Evans, 72 Mich. 367.)

In the case at bar no preliminary investigation was conducted by the Court of First Instance, and for this reason the court never acquired jurisdiction to try the same.

(B) It is alleged that the prosecuting attorney has conducted the preliminary investigation in the manner provided for in section 39 of Act No. 183, as amended by Act No. 612 of the Philippine Commission, and that this is sufficient for the purposes of this trial, but we contend that section 2 of Act No. 612, and all proceedings had thereunder, cannot in any manner confer jurisdiction upon this court to try the case for the reason that the said section is unconstitutional and, therefore, null and void.

The phrase "unconstitutional law," though a contradiction in terms, is used to designate a rule of action that is sought to be established in opposition to the provisions or principles of the fundamental law, and which is therefore in excess of the authority of the body or official promulgating it, and consequently void. (6 A. & E. Encyc. of Law, 890.)

The provision contained in the aforesaid section 2 of Act No. 612, in so far as it provides that "an accused person in the Court of First

Instance of the City of Manila shall not be entitled as of right
40 to a preliminary examination in any case where the Prosecuting Attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment (No. 183), shall have presented an information against him in proper form," is unconstitutional, because it is in conflict with some of the provisions and principles contained in the Philippines Bill.

By reason of the fact that the said provision is now in force, the inhabitants of the city of Manila are placed at the following unfair disadvantages:

1. That persons (inhabitants of the city of Manila) are deprived of their liberty without the proper judicial proceedings, for the reason that the investigation conducted by the prosecuting attorney is not precisely the investigation required by section 13 of General Order No. 58, which has been confirmed and ratified by paragraph 1, section 5, of the Philippines Bill, wherein it expressly provides that "no law shall be enacted in the Philippine Islands which shall deprive any person of * * * liberty, * * * without due process of law."

This provision of paragraph 1 of the Philippines Bill is made complete by the provisions of paragraph 3, which provide that "no person shall be held to answer for a criminal offense without due process of law."

2. That the inhabitants of the city of Manila are denied the legal protection or guarantee of a preliminary investigation before their arrest, which is not true as to the rest of the Filipinos, to whom section 13 of General Order No. 58 secures the right to be cited and to appear and defend themselves in the preliminary investi-
41 gation, whereas said section 2 of Act No. 612 completely denies to the residents of the city of Manila the right to attend the preliminary investigation to which they may be subjected before the filing of the complaint. Therefore, the principle of "equal protection of the law" is not complied with but, on the contrary, is openly violated.

3. Because it infringes upon the right to be protected against arbitrary detentions. It entrusts the preliminary investigation to the prosecuting attorney of the city of Manila, who may conduct the same in the absence of the defendants, as occurred in the present case, and it is left entirely with the prosecuting attorney to determine whether or not, in view of the investigation made by him, the complaint should or should not be filed. And because, the defendants being deprived of the opportunity of defending themselves during the preliminary investigation, the prosecuting attorney of the city of Manila may, without sufficient grounds therefor and acting upon a mistaken conception of the facts, file a complaint which may deprive the innocent defendant of his liberty.

Any criminal proceeding which absolutely denies to the citizen the right to be exempt from "the annoyance, expense, and the work and risk of being tried" for a crime to which the law assigns an afflictive penalty until it has been shown that there is "reasonable cause" to proceed against him is an open violation of the constitu-

tional provisions contained in paragraphs 1 and 3, above mentioned, of section 5 of the Phillipines Bill.

42 The right of the inhabitants of the city of Manila, as has been authoritatively expressed, not to be compelled to go to trial for a felony without some appropriate and orderly proceeding for the purpose of determining whether there is reasonable ground to proceed against them, rests upon a broader and more solid foundation than the express or implied provisions of the law in force, and is secured by that Act of Congress in the same terms as in the Constitution of the United States.

Act No. 612, however, entirely denies such right to the defendants, in section 2. It deprives a part of the inhabitants of the Philippines of one of the guarantees of their personal liberty, to-wit, the judicial determination of whether or not there is probable cause. It makes the Government a party and the judge in the same proceedings. It makes it a party because the Government is the complainant, and it makes it the judge because it confers upon it a judicial judgment which is unappealable, unquestionable and imperceptible, based upon a mysterious and secret investigation.

In the case at bar there is not the slightest shadow of any declaration as to the existence of probable cause, and the prosecuting attorney has not even taken the pains to certify that such probable cause exists. He has expressly refrained from making any statement upon the subject. Neither has the court made any decision upon this point; nevertheless, the defendants have been arrested.

"This principle—due course of law—refers to certain fundamental rights which that system of jurisprudence, of which ours is a derivative, has always recognized. If any of these are disregarded, in the proceedings by which a person is condemned to the

43 loss of life, liberty or property, then the deprivation has not been by 'due course of law.'"

(Brown v. Levee, 50 Miss., 468.)

"It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism * * *."

(Loan Association v. Topeka, 20 Wall. 655.)

Under whatever aspect may be considered the jurisdiction of this court, such jurisdiction cannot be sustained.

II.

That the acts charged do not constitute the crime of libel.

Nowhere in the article quoted in the complaint, nor in any of the paragraphs pointed out as libelous, is any reference made to any particular person or to Mr. Dean C. Worcester, who, according to the complaint, is the person alluded to.

The article which is alleged to be libelous begins as follows:

"On the surface of the globe some were born to eat and devour, others to be eaten and devoured.

Now and then the latter have bestirred themselves, endeavoring to rebel against an order of things which makes them the prey and food of the insatiable voracity of the former. At times they have been fortunate, putting to flight the eaters and devourers, but in the majority of cases they did not obtain anything but a change of name or plumage.

The situation is the same in all the spheres of creation: the relation between the ones and the others is that dictated by the appetite and the power to satisfy it at the fellow-creature's expense.

Amongst men it is very easy to observe the development of this daily phenomenon. And for some psychological reason the nations who believe themselves powerful have taken the fiercest and most harmful creatures as emblems: it is either the lion, or the eagle, or the serpent. Some have done so by a secret impulse of affin-
44 ity and others in the nature of simulation, of infatuated vanity, making themselves appear that which they are not nor ever can be.

The eagle, symbolizing liberty and strength, is the bird that has found the most adepts. And men, collectively and individually, have desired to copy and imitate the most rapacious bird in order to triumph in the plundering of their fellow-men."

Immediately after this vague and indefinite statement, and with no less vagueness and indefiniteness, before describing certain characteristics which, it is alleged in the complaint, refer to the alleged offended party, the article says:

"There are men who, besides eagles, have the characteristics of the vulture, the owl, and the vampire."

The article in question winds up in the same general way by saying:

"It is these birds of prey who triumph. Their flight and their aim are never thwarted.

Who will detain them?

Some share in the booty and the plunder. Others are too weak to raise a voice of protest. And others die in the disconsolating destruction of their own energies and interests.

And then there appears, terrifying, the immortal legend: Mane, Tecel, Phares."

To say, after reading the foregoing quotations, that the article in question refers to the complaining witness is to insist upon a construction of the same more in conformity with the latter's interests than with the true meaning of the article itself.

"When the language of a writing claimed to be libelous is so vague and uncertain that it could not have been intended to be used with reference to any particular person or persons, such language is not actionable." (Petsch v. St. Paul Dispatch Printing Co (Minn.) 41 N. W. Rep. 1034.)

According to Mr. Martin L. Newel (On Defamation, Slander and

Libel) (Edition of 1900, p. 241), in every action for defamation two things are necessary:

45 1. A defamation must clearly appear from the words themselves, because no innuendo can change their meaning.

2. The certainty of the person defamed, because no explanation can make certain that which is uncertain.

A reading of the article alleged to be libelous will show that the statements quoted in the complaint as constituting libel do not refer to any particular person, except to those mentioned in the preceding paragraph which is as follows:

"There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire."

It can hardly be contended that these statements refer to any particular person, and much less to the complaining witness, for the reason that the words "there are men who have such characteristics" cannot be construed to refer to any particular person without doing violence to the plain meaning of the words and without being actuated by deliberate prejudice.

It will not do to allege that "the public officials of the Government of the Philippine Islands, the inhabitants of the city of Manila and the people of the Philippine Islands generally" have understood that the article claimed to be libelous refers to the said Dean C. Worcester. This, besides being very doubtful, constitutes an allegation which is absolutely immaterial since it can have no foundation in the words of the article themselves.

"The language of a criminal libel shall be construed and understood in the sense in which the accused intended it and not as other persons or the court may construe or understand it." (C. v. Kneeland, 20 Pick. 206-216; Updegraff v. C., 11 S. &c. R. 394, 405, 406.)

The same doctrine is laid down by Bishop. (1 Bishop on New Criminal Law, 186, 8th Edition.)

46 "The opinion of a witness as to the intended application of the defamatory words to plaintiff is inadmissible." (25 Cyc. 493.)

The foregoing doctrine is supported by the following decisions:

White v. Sayward, 33 Mo. 322;
Gribble v. Pioneer Press Co., 37 Minn. 277, 34 N. W. 30;
O'Brien v. Bennett, 72 N. Y. App. Div. 367; 76 N. Y. Suppl. 498;
Stokes v. Morning Journal Assoc., 66 N. Y. App. Div. 569; 73 N. Y. Suppl. 245;
Maynard v. Neardsley, 7 Wend. (N. Y.) 560; 22 Am. Dec. 595;
Gibson v. Williams, 4 Wend. (N. Y.) 320;
Van Vechten v. Hopkins, 5 Johns (N. Y.) 211; 4 Am. Dec. 339;
Rangler v. Hummel, 37 Pa. St. 130;
O'Donnell v. Wilkes-Barre Times, 13 Luz. Leg. Reg. (Pa.) 89.

In a decision rendered by one of the courts of Kentucky the following doctrine was laid down:

"The testimony of hearers as to whom they thought the charge referred, judging by current rumor or conversations of others is inadmissable." (Allenworth v. Coleman, 5 Dana (Ky.) 315.)

In considering the article in question, the court should bear in mind the freedom of the press, which is one of the greatest monuments of our modern civilization. For this reason constitutions protect such freedom; and the laws and the governments should not abridge it.

We may quote to the court the following words from Bishop:

"It being fundamental with us that the open and appropriate discussion of things affecting the public should be free, the libel law should never be applied so as to abridge the just freedom of the press. Consequently, although a certain publication may appear on its face as being prohibited by the general libel law, if the suppression of the same is likely to abridge the free discussion of matters essential to the liberty of the citizens or any other public or private right, such publication should not be punished criminally."

47

For the foregoing reasons the defendant in the above-entitled cause prays the court to dismiss the complaint, with the costs of this action de oficio.

Manila, P. I., November 12, 1908.

(Signed) FELIPE AGONCILLO,
RAMON DIOKNO,
FERNANDO SALAS,
Attorneys for Defendant.

48 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Judgment on Demurrer Interposed by the Defendant Martin Ocampo.

Upon reading and considering the information presented in this case, the court is satisfied and so finds that the same is prepared in accordance with the provisions of section 6 of General Order No. 58, being section 3253 of the Compiled Laws.

The matter urged in part one of the demurrer presented in this

cause has already been considered and determined by the court in its previous orders issued herein.

In part two of said demurrer the question of the failure of specification of the name of the complaining witness or offended person in the article complained of here is urged as a fatal omission or infirmity in the information. This question, as the court remembers it, has been considered and determined by a Federal court in the case of 'Enquirer Co. vs. Johnson', reported in the 72nd Federal Reporter, in which case the doctrine was promulgated that an acquaintance of an offended person in matters of this kind may testify that upon reading the article complained of he understood it to refer to such offended person. This question was also con-
49 sidered by the Honorable Supreme Court of the Philippine Islands in the case of Causing vs. Jacosalem, reported in the 5th Volume of Philippine Reports, at page 155 of the English edition.

Considering all the questions submitted in said demurrer and the arguments of counsel in support thereof, the court finds that said demurrer is not well founded, and it is ordered that the same be overruled, and that the defendants each and all plead to said complaint forthwith.

Manila; P. I., November 12, 1908.

(S'g'd) CHAS. H. SMITH, *Judge*.

I hereby certify that the above decision was dictated by the court in the presence of the accused Ocampo accompanied by his attorneys and that notice of it was accepted by them at the time.

(S'g'd) FELIPE BUENCAMINO, JR.,
Act'g Ass't Clerk.

To the foregoing order each and all of the defendants separately excepted, November 12, 1908.

50 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Order.

Upon the issuance of the order of the court overruling the demurrer presented by each of the defendants to the information in

this cause, they were each asked by the court to plead to said information, and each defendant stood mute.

It is therefore ordered that the plea of not guilty be entered in said cause for and in behalf of each of said defendants.

Manila, P. I., November 12, 1908.

CHAS. H. SMITH, *Judge*.

I hereby certify that the above order was rendered by the Court in the presence of all the accused accompanied by their attorney and that notice of same was at the time accepted.

FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

51 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for Manila, Sala I.

Criminal Cause No. 4295.

THE UNITED STATES
vs.
MARTIN OCAMPO et als.

Libelo.

Order.

The arraignment in this cause having now become completed, it is ordered that the motion filed by each defendant for a separate trial be and is hereby granted.

It is further ordered that all the accused and counsel for both sides appear before this court on Saturday, November 14th, 1908, at 10:00 o'clock in the morning of said day, for the purpose of fixing the date of trial and for the further orders of the Court.

It is so ordered.

Manila, P. I., November 12, 1908.

(S'g'd) CHAS. H. SMITH, *Judge*.

I hereby certify that the above order was rendered by the Court in the presence of all the accused accompanied by their counsel, and that notice of it was by them accepted at the time.

(S'g'd) FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

52 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Order of Transfer of Cause to Another Judge.

A substantial number of important criminal cases being assigned for trial in this branch of the court for the next three weeks, and the Judge presiding over this criminal sala being obliged to undergo a daily surgical operation for several days yet to come, and being advised by Dr. E. H. Stafford that the said judge should not engage in any work whatever at the present time, and it being evident that said judge cannot continue to work over hours for a period of at least three weeks from this date; and the defendants herein being entitled to a fair and speedy trial, which in all probability could not be granted if said cause were tried before said judge; and the judge now presiding over this sala having been prosecuting attorney during the year 1905, and as such prosecuting attorney having instituted in this court a certain criminal cause (libel) entitled; United States vs. Fernando Guerrero, Martin
53 Ocampo and Lope K. Santos, docket No. 2215, and having sat in the trial of said cause as such prosecuting attorney, and two of the defendants, to wit, Martin Ocampo and Lope K. Santos, in the present cause, having been defendants in the aforesaid criminal cause No. 2215, and it being charged here that the article complained of was published by and in the newspaper called "El Renacimiento," being the same newspaper with which the defendants in said cause, docket No. 2215, were alleged to be connected; and, while said judge presiding over this sala has no prejudice or illfeeling whatever against the defendants or any of them, still to contribute to the continued high standing of this court and to promote the ends of justice:

It is ordered: (*a*) That said cause and all further proceedings therein be transferred to his Honor, A. S. Crossfield, one of the regular judge- of this court; and, (*b*) that the defendants each and all, together with their counsel, appear before said judge at eleven o'clock forenoon of the 14th day of November, 1908, for such further orders and proceedings as may seem just, legal and proper to

said last mentioned judge presiding over one of the branches of this court.

Manila, P. I., November 14, 1908.

CHAS. H. SMITH, *Judge.*

I hereby certify that the above order was read to the accused accompanied by their attorneys in open court on this 14th de November, 1908, at 10:05 a. m.

FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

54 Thereafter and on November 17th, 1908, the defendant Martin Ocampo filed a petition for the appointment of assessors, which was granted and the necessary appointments and citations duly issued.

Thereafter and on November 25th, 1908, the defendant Martin Ocampo filed a motion to postpone the trial of his case and asking for additional time within which to present the testimony of the witnesses David P. Barrows, Dr. Saleeby and Mr. Otto Scherrer, and others whose names are not given, requesting also that Governor-General James F. Smith be cited to appear and testify as a witness in regard to the matters stated in the motion. The defendant further announced his intention of citing J. Romero Salas as a witness and finally stated that he had not theretofore subpœnaed said witnesses, relying on the promise made by the court before trial that defendant would have all the time which he might require to present whatever evidence he had in defence.

The foregoing motion was granted and subpœnas issued accordingly.

Thereafter and on January 9th, 1909, the trial court rendered its decision as to the defendant Martin Ocampo, as follows:

55 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part IV.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Sentence.

This case came before the Court for the separate trial of the defendant, Martin Ocampo, upon a complaint charging the defendants with being the proprietors, owners, directors, writers, managers, administrators, printers and publishers, in the city of Manila, P. I., of a certain newspaper known as "El Renacimiento," and that on

the thirtieth day of October, nineteen hundred and eight, there was published in said newspaper an article (copied at length in the complaint) with malicious intent to injure one Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, and to impeach his honesty and reputation as a man and as an official of the government of the Philippine Islands, and that said newspaper with the article stated therein was regularly circulated in the regular daily issue of said newspaper.

Mr. Jesse George, Prosecuting Attorney for the City of Manila, and Mr. L. M. Southworth, Assistant Prosecuting Attorney for the City of Manila, appeared in behalf of the Government; Sr. Roberto Moreno, Sr. Fernando Salas and Sr. Luciano de la Rosa on
56 the part of this defendant, Martin Ocampo.

The facts as presented by the evidence on the part of the Government are:

That on the 30th day of October, 1908, there was published in "El Renacimiento", a daily newspaper published in the city of Manila and circulated throughout the Philippine Islands, the following article:

MANILA, 30 *de Octubre de* 1908.

Editorial.

Aves de Rapiña.

En la extensión del globo, unos han nacido para comer y devorar, otros para ser comidos y devorados.

Una y otro vez, estos últimos se han agitado, tratando de revelarse contra un orden de cosas en que son presa y pasto para la voracidad insaciable de los primeros. Alguna vez han tenido suerte ahuyentando lejos á los comedores y devoradores, pero en la mayor parte de las veces no se ha conseguido más que un cambio de nombre ó de plumaje.

En todas las esferas de la creación, la situación es la misma, la relación entre unos y otros es la que dictan el apetito y la fuerza pasa saciarlo á costa del prójimo.

Entre los hombres, es facilisimo observar el desarrolla de este fenomeno diario. Y por alguna razón psicológica los pueblos que se creen poderosos han tomado por emblema las criaturas mas fieras y mas dañinas: ora es el león, ora es aguila ó la serpiente. Unos lo han hecho por un secreta impulso de afinidad, otros por efecto de una simulación, de vanidades infatuadas aparantando lo que no son ni pueden ser jamas.

El aguila, simbolizando libertad y fuerza, es el ave que ha encontrado más adeptos. Y los hombres, colectiva é individualmente, han querido copier é imitar al ave mas rapaz, por triunfar en el saqueo de sus semejantes.

Hay hombres que, ademas de ser aguilas, reunen en sí las caracteristicas del buitre, del buho y del vampiro.

Subiendo á las montañas de Benguet para clasificar y medir craneos de igorrotes y estudiarlos y civilizarlos y sorprender al vuelo,
con ojo de ave de rapiña, donde se encuentran los grandes
57 yacimientos del oro, la presa oculta entre los montes solitarios, para apropriarselos despues gracias á facilidades legales hachas y desehas al antojo, pero siempre en beneficio propio.

Autorizando á despecho de leyes y ordenanzas una matanza ilegal de ganado enfermo, para sacar beneficio de la carne infecta y podrida que el mismo estaba obligado á condenar de su posición oficial.

Presentandose en todas las ocasiones con el seño fruncido del sabio que consume su vida en los misterios del laboratorio de ciencia, cuando toda su labor cientifica se reduce á desecar insectos é importar huevas de peces como si los peces de este pais fueran menos nutritivos y menos ricos, de tal modo que valiera la pena de sustituirlos con especies venidas de otros climas.

Dando un impulso admirable al descubrimiento de veneros de riquezas en Mindoro, en Mindanaw y demás puntos vírgenes del Archipiélago con el dinero del pueblo y con el pretexto de bien público, cuando en rigor se trata de poseer todos los datos y la clave de la riqueza nacional en provecho personalísimo como se demuestra por la adquisición de inmensas propiedades registradas con nombres ajenos.

Promoviendo por medio de agentes y consocios secretos la venta á la ciudad de terrenos sin valor por cantidades fabulosas que los padres de la ciudad no se atreven á rehusar por el temor de disgustar á quien vá detrás de la moción, y que no rehusan por lo que les conviene.

Patrocinando la concesión de hoteles en sitios terraplenada con la perspectiva de enormes utilidades, á expensas de la sangre del país.

Tales son las características del hombre que es á la vez águila que sorprende y devorar, buitre que se solaza en las carnes muertas y putrefactas, buho que aparenta una omnisciencia petulante y vámpiro que chupa en silencio la sangre de la victima hasta dejarle exangue.

Estas aves de rapiña son las que triunfan. Su vuelo y su dirección jamás se vén detenidos.

Quien los detendrá?

Unos participan del botín y del saqueo. Otros son tan debiles para levantar la voz de protesta. Y otros mueren en la desconsoladora destrucción de sus propias energías é intereses.

Y entonces surge, terrorifica la leyenda inmortal: Mane, Tecel, Phares."

And this publication was circulated throughout the Philippine Islands by manual delivery of said newspaper and the sending of it through the mail to subscribers;

That prior to the above date, and on October 27th, 1908, there
was published in the same newspaper an article entitled
58 "Hablillas del Vulgo Son", which is as follows:

"Dicese que algunos abogan por que sea nombrado para

formar parte de la Hon. Comisión de Filipinas un hombre de negocios.

Pero dícese también que ya figura en el seno de ese cuerpo colegislador un hombre de negocios, sin contan al comisionado Forbes que, ademas de ser un distinguido clubman y un brillante sportman, es muy experto en materia de ferrocarriles, navegación, comercio, etc.

Eso debe ser verdad, porque el hombre de Boston está ausente y sin embargo, * * * there is something rotten in the Ayuntamiento.

Lo que huele á podrido es la carne de las veintiun vacas gordas de Lack and Davis, W. Dean and Co., Limited."

And this publication was circulated throughout the Philippine Islands by manual delivery of said newspaper and the sending of it through the mail to subscribers:

That on October 26th, 1908, there was published in the same newspaper an article entitled "Violacion de las Ordenanzas. Autoridades Complicadas. Habremos Comido Carne Infactada?" in which, after discussing an alleged illegal slaughtering of cattle by Lack and Davis, the following statement is made:

"It results clearly that Mr. Worcester is responsible for the violation, but inasmuch as he is the Secretary of the Interior the Board preferred to ignore the matter. * * *

How can they expect to put this capital in a sanitary condition when the laws governing importation and sanitation are so boldly violated, whenever it suits the business, by the very authorities called upon to see the enforcement of the law or of the ordinance.

Nothing will happen to Lack and Davis because they are being shielded by great men. The Prosecuting Attorney will have nothing to do with them, notwithstanding the evident violation committed. That which is of importance is to satisfy Worcester."

And this publication was circulated throughout the Philippine Islands by manual delivery of said newspaper and the send-
59 ing it through the mail to subscribers.

From the facts gleaned from these articles another fact must be concluded.

The article of October 27th, 1908, refers to a business man on the Philippine Commission and, after eliminating Commissioner Forbes on account of his absence, states:—

"There is something rotten in the Ayuntamiento. What smells rotten is the meat of the twenty-one fat cows of Lack and Davis, W. Dean and Co., Limited."

Dean C. Worcester is in all probability intended by the name "W. Dean."

In the article of October 26th, 1908, which clearly refers to the same matter as that of the article of October 27th, 1908, Mr. Worcester, as Secretary of the Interior, is declared responsible for the violation of ordinances.

These two articles are not a part of the libel charged, and can only be used to indicate who the libelous article charged in the complaint refers to.

In the article charged as libelous published on October 30th, 1908, as hereinbefore stated, there appears the following:

"There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire."

And subsequently:

"Authorizing, in spite of laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat, which he himself was obliged to condemn by virtue of his official position."

This clearly refers to the same matter appearing in the articles published in "El Renacimiento" of October 26th and October 27th, 1908, as before stated, and naturally must refer to the same person therein referred to.

60 Further this article says:

"Ascending the mountains of Benguet to classify and measure the skulls of the Igorot, and study and civilize them," etc.

"Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life * * * and importing fish eggs," etc.

"Giving an admirable impulse to the discovery of wealthy veins of ore in Mindoro," etc.

"Promoting through secret agents and partners the sale to the city of worthless lands at fabulous prices," etc.

"Patronizing concessions for hotels on filled-in land, with the prospect of enormous profits, at the expense of the blood of the people."

"Such are the characteristics of the man who is at the same time an eagle who surprises and devours," etc.

The evidence discloses:

That it has been and is the duty of the Secretary of the Interior, Mr. Worcester, also a member of the Philippine Commission, to study the Igorot of Benguet, and other mountain tribes of the Philippine Islands, with a view to their civilization and better government;

That he is a scientist, and has imported fish eggs into the Philippine Islands, the only living fish eggs ever imported;

That the Bureau of Mining being under his supervision, it is a part of his official duty to promote the discovery of ore in all parts of the Philippine Islands;

That in his official capacity he had to do with the sale of certain land to the city of Manila;

That in his official capacity, as member of the Philippine Commission, he was interested in the erection of a hotel in Manila, and in connection with the other commissioners contemplated a concession of filled-in land known as the Luneta extension in the

61 city of Manila;

That all of these facts, just hereinbefore stated, were within the knowledge of any person who desired to inform himself, and were a matter of public notoriety.

Taking this evidence, the statements made in the article complained of, the names of the persons mentioned in the articles pub-

lished October 26th and October 27th, 1908, the matter therein referred to, all into consideration, and the other conclusion of fact before referred to, which must be arrived at, is that Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, is the "man" intended, "who is at the same time an eagle who surprises and devours" etc., mentioned in the article published, as before stated, on October 30th, 1908, and against whom it was directed.

No defense was offered as to these facts, found as before stated, or the other conclusion of fact arrived at, as just before mentioned, unless possibly that to be inferred from the cross examination of witnesses for the government, which might possibly tend to show that some other person, or entity, than the said Dean C. Worcester might have done the things which it was his duty, as an officer of the government, to do in relation to the matters referred to in the article, and possibly to establish the truth of the charge in the article that he used public money for his own benefit.

There was a total failure to establish by such cross examination any such propositions.

The defendant, by cross examination of some of the witnesses for the government, indicated that his defense would be that
62 he was not responsible for the publication of any article in the newspaper "El Renacimiento," because he was only El Administrador of that paper, and in making his defense presented witnesses who testified that this defendant was El Administrador, that he had charge and supervision over the business matters of the paper only, that he looked after the publication of commercial notices and professional advertisements only, and that he had nothing whatever to do with the policy of the paper or the preparation of any editorial, and had no control in any manner over the director of the newspaper, who had absolute control over all news items and editorial matter.

There was evidence to the effect that "El Renacimiento" was a newspaper published by a philanthropic society, which was not organized in any manner in compliance with the requirements of existing law, nor was it registered, and that the society consisted of a number of men who advanced some money to start the newspaper, and that they did not expect to get their money back or any proceeds from it; that this defendant is a shareholder in the society and had in the beginning solicited others to contribute funds to start the paper, and put in five hundred pesos himself;

That this defendant engages and pays all employees of "El Renacimiento" except the director and redactores, and these he has nothing to do with except to determine the amount of money which should be paid them;

That this defendant provides for the publication and circulation of the newspaper by employing and paying printers and persons for the delivery of the paper after printed to subscribers and to
63 the postoffice, from which it is distributed throughout the islands.

I find the further facts to be, that this defendant, Martin Ocampo, is El Administrador, commonly understood in English to be the

business manager, of "El Renacimiento", and that as such has charge of and edits all commercial notices and professional advertisements published in that paper;

That he collects all moneys due the paper and pays its debts, and engages the employees except the director and redactor jefe, and pays them.

That he causes the publication and publishes and circulates "El Renacimiento" throughout the Philippine Islands, and so published and circulated the editorial of October 30th, 1908, containing the article complained of;

That he is one of the owners of "El Renacimiento" so far as ownership exists.

The conclusions are:

That the article published in the newspaper "El Renacimiento" on October 30th, 1908, as charged in the complaint, is a malicious defamation tending to impeach the honesty, virtue and reputation of Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, and is a libel;

That no justifiable motive for publishing the article has been shown, neither has any evidence of its truth been given;

That it has not been shown that this defendant, Martin
64 Ocampo, is the author of the article;

That this defendant, Martin Ocampo, published and caused to be published said article by providing for the printing of "El Renacimiento", in which the article appeared, and the circulation of it throughout the Philippine Islands;

That he as one of the proprietors of the newspaper "El Renacimiento", is chargeable with the publication of the article, even though he is not the author of it, and even though he did not personally publish or cause it to be published.

I therefore find this defendant, Martin Ocampo, guilty as charged in the complaint, and sentence him to six months' imprisonment and to pay a fine of two thousand pesos and one-fifth of the costs of this action.

The sentence will be executed at Bilibid Prison, Manila, P. I.

In case of insolvency and non-payment of fine, the defendant will suffer subsidiary imprisonment at the rate of two and a half pesos per day until the fine is satisfied according to law.

Manila, P. I., January 9th, 1909.

(S'g'd) A. S. CROSSFIELD, *Judge.*

The Assessors in this case agreed to the findings of fact made.

(S'g'd) A. S. CROSSFIELD, *Judge.*

From the foregoing decision the defendant Martin Ocampo duly appealed to the Supreme Court of the Philippine Islands.

65 *Index.*

	Direct.	Cross.
Dean C. Worcester	2, 69	11,
Arcadio Arellano	26, 34	30, 34
Enrique Barrera y Caldes	36,	39,
Santiago Perez	40,	43,
C. P. Shuman	46,	48,
Newton W. Gilbert	49,	52,
James Francis Smith	52, 145	59, 151
Gregorio Araneta	61, 68	66,
Gregorio Pasicolan	71,	76,
Hugo Salazar	77,	...,
Francisco A. Bustillo	79,	...,
H. H. Marcus	80,	83,
Maximo Sevilla	84,	...,
Lope K. Santos	86,	92,
Leoncio Gonzales Liquete	97,	...,
Pedro Aunario	102,	...,
Faustino Aguilar	107, 114	112,
Fidel A. Reyes	115,	118,
Jaime C. de Veyra	122,	125,
Fernando Maria Guerrero	126,	131,
Angel José	138, 140	139,
Felipe Barretto	141,	144,
N. M. Saleeby	153,	154,
David P. Barrows	154,	157,
José M. Romero y Salas	157,	...

66 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part IV.

Before Judge Crossfield.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendant-.

Proceedings.

NOVEMBER 18TH, 1908.

Upon calling the case for trial counsel for the accused, Martin Ocampo, asked for a separate trial, which was granted.

Counsel for the accused, Martin Ocampo, then asked that assessors be appointed to sit with the Court in the hearing of the trial of the case, whereupon Sr. Miguel Velasco and Sr. Tomas Arguelles were duly sworn to act as such, according to law.

Mr. Jesse George, Prosecuting Attorney for the City of Manila,

and Mr. L. M. Southworth, Assistant Prosecuting Attorney for the City of Manila, appeared in behalf of the Government; Sr. Roberto Moreno, Sr. Fernando Salas and Sr. Luciano de la Rosa on the part of the accused; the accused was also present in court.

67 DEAN C. WORCESTER, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. Dean C. Worcester.
Q. What is your occupation?
A. Officer of the Government, Member of the Philippine Commission, now Secretary of the Interior of the Insular Government of the Philippine Islands.
Q. Where do you reside?
A. At No. 16 Calle Nactajan, Manila.
Q. How old are you?
A. Forty-two years of age.
Q. How long have you been a member of the Philippine Commission?
A. Since its appointment in April, 1900.
Q. How long have you been Secretary of the Interior of the Insular Government of the Philippine Islands?
A. Since the establishment of the Executive Department of the Government in September, 1901.
Q. State whether or not you were a member of the Philippine Commission and Secretary of the Interior of the Insular Government of the Philippine Islands on the 30th day of October last?
A. Yes sir, I was.

68 Q. Please state to the Court whether you have ever travelled over the Philippine Islands?
A. I have.
Q. Please state to the Court briefly the extent of your traveling over the Philippine Islands?
A. I visited the islands of Bataan and Saptan in the Bataanes Group, every province in the island of Luzon, all of the islands composing the province of Mindoro, most of the small islands and all of the large islands composing the province of Palawan, all of the important islands in the Jolo Archipelago, all of the provinces in the island of Panay, all of the important islands in the province of Romblon, the island of Cebu, the island of Bohol, the islands of Samar and Leyte, all of the provinces in the island of Mindanao, all of the districts of the Moro Province; briefly I have visited every island of importance and every province in the Philippine Islands.
Q. State to the Court the extent of your personal acquaintance over the Philippine Islands?
A. I have a very extensive personal acquaintance through the provinces of the Philippine Islands, both as result of my journeys in Spanish times, when I lived in the provinces for four years, and as the result of the necessity of official inspection trips under the

American Government, and as the result of trips with the
69 Philippine Commission at the time Civil Government was organized in the several provinces of the Archipelago, and as a result of my official relations as Secretary of the Interior, which brings me into touch with governors and provincial boards throughout the islands, and through the fact that certain acts and resolutions of governors and provincial boards relative to members of the non-christian tribes are subject to my approval, and through the further fact that the application of the forestry laws relative to the use of timber of the first group in all of the provinces are subject to my approval.

Q. Please explain to the Court the extent to which the Spanish language is spoken and read over the Philippine Islands, briefly

A. The Spanish language is generally spoken in every important town and barrio of the Philippine Islands.

Q. And how about being read?

A. It is also read in all the important towns and barrios.

Q. I will show you what purports to be an editorial in the newspaper El Renacimiento, which I ask to have marked Exhibit A., and will ask you to state if you know what that paper is?

A. I do.

Q. What is it?

A. It is an editorial article published in the newspaper known as El Renacimiento, in its number of Friday, October 30th, 1908.

70 Q. Please state whether or not you have ever read that article?

A. I have.

Q. When did you read it?

A. I read it about half past seven o'clock on the morning of Monday, November 2nd.

Q. State after reading that article, did you understand to whom it referred?

Sr. SALAS: Objected to on the ground that it is incompetent, and would express only the personal opinion of the witness.

Sr. MORENO: I also object for the same reason.

The COURT: Objection sustained.

Mr. SOUTHWORTH: Exception.

Q. I will ask you to take that article and refer to the matter in which a certain person is charged with ascending the mountains of Benguet, and to state what connection you have had with matters of that kind, as alleged in this communication?

Sr. SALAS: Objected to for the reason before stated, and because part of the question tends to establish the connection of the witness with an article said to be libellous.

The COURT: Objection overruled.

Sr. SALAS: Exception.

A. I have general executive charge and control of the work of studying and civilizing the non-christian places of the Phil-
71 ippine Islands, including the Igorotes of Benguet. I have gone up into the mountains of Benguet for the purpose of

studying them and for the purpose of civilizing them. I am a member of the Philippine Commission, which is the legislative body of these Islands.

The COURT: Was it a matter of general public notoriety that you were so employed and in prosecution of that going to the mountains of Benguet and among the Igorotes?

A. It was. I have been attacked in the newspapers of this city for wasting my time in the performance of duties imposed upon me by law.

Mr. SOUTHWORTH: Continue with your answer, Mr. Worcester, if you please.

A. And as a member of the legislative body of these islands I have influence in the passage of legislation relative to matters pertaining to the securing of titles to mineral properties, and as Secretary of the Interior from the time of the establishment of the executive department of this government, those bureaus of the Insular Government which have exercised all the control which has been exercised relative to mines and mineral concessions, are bureaus of my department and are under my executive control.

Q. Referring again to this article, to that part which charges the violation of certain laws and ordinances of the Philippine Islands in reference to public health I will ask you to state what connection you have with the laws of the Philippine Islands and the ordinances of the City of Manila in reference to matters of public health, if any?

72

Sr. SALAS: Objected to for the same reason as before stated, and on account of the question being leading.

The COURT: Objection overruled.

Sr. SALAS: Exception.

A. I have charge and executive control of the Bureau of Health, which watches over the health of the inhabitants of the Philippine Islands, and formerly looked after that of domestic animals as well, and I am in charge of the Bureau of Agriculture, which at present has charge of the duty of safeguarding the health of domestic animals, and incidentally of public health by preventing the consumption of meat not fit for human use. Act No. 1760, entitled "An act to prevent the introduction into the Philippine Islands of dangerous communicable animal diseases, to prevent the spread of such diseases within the Islands, and for other purposes," contains a section as follows: "It shall be unlawful for any person, firm, or corporation knowingly to ship or otherwise bring into the Philippine Islands any animal suffering from, infected with, or dead of any dangerous communicable disease, or any effects pertaining to such animal which are liable to introduce such disease into the Philippine Islands; provided, that any such animal or effects may be permitted by the Director of Agriculture to enter the Islands under such conditions as to quarantine, cremation, or other disposal as he may direct, or which shall be deemed by him sufficient to prevent the spread of any such disease."

73

Sr. SALAS: It is moved that this section of the act which has

just been read by the witness be stricken from the record, on the ground that it is simply a reading of a law which is in existence, and is unnecessary to be testified to.

The COURT: Motion denied.

Sr. SALAS: Exception.

Mr. SOUTHWORTH: Proceed, Mr. Worcester.

A. Under the provisions of this section the Director of Agriculture may admit to these islands animals suffering from dangerous communicable diseases, or effects pertaining to such animals, and such action of the Director of Agriculture is subject to the approval of the Secretary of the Interior. As a matter of fact the question was raised as to whether the Secretary of the Interior did or did not, had or had not objection to the landing of flesh from animals belonging to a shipment some of which were diseased.

Q. I will ask you to state whether or not your relation to these matters about which you have just testified is not a matter of public knowledge, common knowledge, in the Philippine Islands?

A. It is, and this same publication has attacked me by name in connection with the landing of shipments to which I have just referred.

Q. I will now hand you a paper, marked for identification Exhibit B., which purports to be an article in the newspaper El Renacimiento of October 27th, 1908, and will ask you if that is the article to which you refer?

74 A. This is one of two articles dealing with this subject; the other mentions me by name. This one refers to the firm of Lack & Davis, W. Dean & Co. There is no such person as W. Dean in Manila, but my name is Dean Worcester.

Q. I will show you another paper, marked for identification Exhibit C., which purports to be an article in the newspaper El Renacimiento of October 26, 1908, and will ask you to state if you ever saw it before, and what it is?

A. I have seen this before.

Q. What is it?

A. It is an article in the number of El Renacimiento dated October 26th, 1908, entitled "Complicated Authority. Shall we be obliged to eat infected meat."

Q. State whether or not that is one of the articles to which you referred in connection with your statement in regard to your connection with this charge in the article complained of in this case, in regard to meat, and ordinances and laws, etc., and public health?

A. It is, I am twice referred to in this article by name.

Q. I see also in this article complained of, that it refers to a man who presents himself on all occasions with the wrinkled brow of the scientist, who consumed his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs into the Philippine Islands, etc., I will ask you to state what connection and relation you have had in these matters specified in this articles complained of?

75 A. It is generally known that I was a Professor of Zoology before I came to the Philippine Islands, that I had ad-

ministrative charge of the Bureau of Science, and that I have frequently performed work in the laboratory of the Bureau of Science; that I am the only person who has imported fish eggs to the Philippine Islands since American occupation.

Q. I will ask you to refer to that portion of the article which speaks of giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao and in other virgin regions of the Archipelago, etc., explain to the Court what connection or relation you have had with these matters?

A. I have travelled extensively in the virgin regions of the Archipelago, including the interior of Mindoro and the interior of Mindanao. I have approved of and directed the carrying on of the investigation of the mineral resources of Mindanao, of Lepanto and of Benguet by the former mining bureau and the present Division of Mines of the Bureau of Science, and these expeditions and these investigations have been paid for, so far as they were official, from the Treasury of the Philippine Islands.

Q. I will call your attention to a certain paragraph in this article in which it speaks of the sale to the city of certain lands, etc., and will ask you to state to the Court the connection you have had with matters of that kind?

A. In two cases as a representative of the Philippine Commission, named by the Philippine Commission for that purpose, I
76 have conducted negotiations relative to the purchase of tracts of land in which the city was interested, and a portion of one of these tracts of land has since been conveyed to the city of Manila.

Mr. SOUTHWORTH: That is all.

Cross-examination by Sr. MORENO:

Q. You have stated that you have made several trips through the Philippine Islands as member of the Philippine Commission; were these trips made by authority of the Philippine Commission?

A. Yes sir.

Q. As one of the members of the Commission?

A. Yes sir.

Q. For what purpose?

A. For the purpose of establishing civil government in the provinces.

Q. Then you refer to the time when Ex-Governor Taft established civil government?

A. I refer to the time when the Commission established civil government, I am not aware that Ex-Governor Taft ever established civil government in any of the provinces.

Q. Outside of these trips, did you not make any others?

A. Many others.

Q. For what purpose did you make these many other trips?

A. Does the gentleman desire me to give him a list of every trip ever made, and state the object in each case?

Q. Yes sir.

77 A. I think I should have to spend some time in investigating the records before I could answer that question, after eight years of travel in the Islands.

Q. Do these trips or voyages appear in the records of the Commission?

A. Some of them.

Q. Not all?

A. No, not all.

Q. But all those trips were authorized by the Commission?

A. Certainly not, as Secretary of the Interior I have a right to make trips which I deem to be necessary in the performance of my duty, and under the laws of the Commission I am required once during each fiscal year to inspect each one of the provinces organized under the Special Provincial Government Act, and the result of these trips do- not appear in the records of the Commission, except in so far as they are included by me in my annual report, or any other special report which I may deem it necessary or desirable to make to the Commission.

Q. But the Commission did not authorize you to make these trips to discover mineral wealth?

A. I never made any trips to discover mineral wealth, I know nothing about the details of such work.

Q. You have just testified that you made several studies to discover the mineral wealth of the different provinces?

A. I did not, I stated that I had directed the carrying on of such studies, I ordered it.

78 Q. And for the study of the non-christian tribes as well as the Igorotes, you went as one of the members of the Philippine Commission?

A. I went as Secretary of the Interior on all trips subsequent to the establishment of the Executive Department.

Q. Did you limit these studies in regard to the non-christian tribes to the Igorotes?

A. Not at all.

Q. You studied all the non-christian tribes in the Philippine Islands?

A. I have not.

Q. Do you know whether any other person made the same studies that you have made in regard to the non-christian tribes?

A. No other person has made the same studies.

Q. Do you know Mr. Otto Scherrer?

A. Very well.

Q. Is it not true that that gentleman also made such studies?

A. Certainly, and incidentally I know various other people who made such trips.

Q. Is it not true it is notoriously known that these people made the same studies that you did?

A. I can hardly answer for the public in that matter.

Q. You have just stated that it is well known, publicly known, that you made these studies?

A. It is.

Q. And how can you answer for the public in your case?

79 A. This very publication has attacked me by name for making such studies, in its English edition.

Q. And that is the only reason you have for stating that you know you are the only one who made these public studies?

A. Not at all.

Q. By what other way do you know that you are publicly known as making these studies?

A. I have published the results of my studies in the Philippine Journal of Scientists, which is generally circulated in these Islands.

Q. And that is printed in English?

A. Yes sir.

Q. Is it not true that that publication has no translation in Spanish?

A. I think it is not translated, not by the Government at least.

Q. You have stated that in most of the important pueblos and barrios the Spanish language is spoken?

A. Yes.

Q. How do you know that fact?

A. Because I have visited most of the important towns, and very many of the important barrios of these Islands, and have had occasion to communicate with other people. I have no considerable knowledge of any native dialect, and in communicating with the people which I had occasion to do, I had to use the Spanish language, and I have never had difficulty in finding in any town, or any important barrio, of these islands someone who did not understand that language fairly well.

80 Q. But is it not true that in these important barrios or pueblos you found only a couple of them who could understand you in Spanish?

A. I think there are doubtless many barrios, particularly small barrios, where only one or two understand the Spanish language, but I never personally found a town in the Philippine Islands where only one or two people understood the Spanish language.

Q. You state you have made studies in regard to the Igorotes of Benguet, did you on such occasions come in contact with anyone who spoke Spanish?

A. Yes, several of them.

Q. The duties you have, by virtue of which you have control of the mines, health, forestry, non-christian tribes, agriculture, and ordinances of health of the city of Manila: does that appear in any public document of record?

A. It does.

Q. Can you indicate where that appears?

A. I could, if the gentleman desires to spend several days here and were to provide me with the laws of the Philippine Islands I could possibly find them all.

Q. Is it not true there is a law which prohibits the killing of cattle outside of the places designated for that purpose?

A. Does the gentleman refer to a law of the Philippine Islands?

Q. Yes sir.

A. No, I do not know of any law to that effect, possibly
81 there may be something in the municipal code relative to the places where animals may be slaughtered, in the municipalities of the islands organized under the municipal code, and there are undoubtedly provisions in the ordinances of the city of Manila. As far as I know there is nothing in Insular legislation which has to do with the places in the city of Manila.

Q. By virtue of the authority you have as Secretary of the Interior, can you order anything against the ordinances of the city of Manila?

A. Not unless the ordinances are in violation of the laws of the Philippine Islands.

Q. And the ordinances of the city of Manila prescribing the places where animals must be slaughtered, are they against the laws of the Philippine Islands?

A. I am not familiar with the ordinances of the city of Manila on that subject, having nothing to do with it.

Q. But supposing such ordinances were in existence, as a member of the Philippine Commission and Secretary of the Interior, can you not tell whether such ordinances were against any law of the Philippine Islands?

A. I do not understand the question: does the gentleman desire to submit ordinances to me and inquire whether the places referred to—I do not understand.

Q. Supposing that there was in existence an ordinance such as I have stated, which prescribed the places where animals must be slaughtered, would such an ordinance be against any law that you know of as member of the Commission?

82 A. No sir, I have already stated that I know of no law of the Commission bearing on the subject.

Q. Is it not true that recently you gave orders to the Director of Agriculture in relation to the slaughtering of animals in the Bay?

A. No, I never ordered the slaughtering of any animals in the Bay.

Q. But you learned of that fact?

A. I learned of it after it had occurred.

Q. Then this paragraph of the article which is said to be libellous, which says: "Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position," could not refer to you?

A. I understood that as referring directly to me.

Q. Did you authorize the slaughtering of animals, or not?

A. I did not.

Q. And the paragraph which says: "Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to espy in his flight with the eye of the bird of prey where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit:" Did you not while making these studies regarding the Igorotes at the same time make studies for the purpose of finding gold?

A. No sir, I did not.

83 Q. Then the only thing you did was to induce others to make these studies?

A. I have not induced them, I instructed them.

Q. Then this paragraph does not refer to you, does it?

A. On the contrary, it does refer to me.

Q. If you did not devote yourself at the time you were ascending the mountains of Benguet to the study of the Igorotes, and if you did not devote yourself to the object of finding gold, how can you state that this paragraph refers to you?

A. I do not understand it is necessary that these libellous statements should be true in order to have them refer to me, Sir, I understand the truth of them has nothing whatever to do with the person to whom they refer.

Q. And in another paragraph it says: "Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth while replacing them with species coming from other climes:" is it not true regarding the study in the laboratory that from the time you formed part of the Philippine Commission you did not do any study, but that it was just merely for your official entertainment?

A. That I made no official study except for my entertainment, no sir.

84 Q. Is it not true that now and then you devote yourself to dissecting birds and insects?

A. I have never dissected an insect in my life, I have skinned and preserved various birds from time to time.

Q. You did not go to the laboratory of science for that purpose?

A. I have.

Q. Did you only go there for the purpose of inspecting how things were going on?

A. No, I went there for other purposes.

Q. But not for the purpose of dissecting insects or birds?

A. For the purpose of dissecting birds, not for the purpose of dissecting insects.

Q. And another paragraph says: "Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others:" When you visited Mindoro and Mindanao and other virgin places of the Archipelago did you not go for the purpose of obtaining all the date of the wealth that is contained in those islands and places for your own personal benefit?

A. I did not.

Q. And is it not true also that you have acquired immense properties in the names of others?

85 A. I have not acquired any property in the name of anyone else.

Q. Is it not true also that you made these trips with money of the people, has not the Insular Treasury paid for these trips of yours, and has it not been done on account of a decision of the Commission, an act passed by the Commission to pay the expenses of these trips?

A. I have already stated that some of these trips were made in accordance with laws passed by the Commission, and some were made in the exercise of my judgment as Secretary of the Interior, and these trips have been paid from the Insular Treasury, the money in which comes from the people.

Q. Did you charge an extra per diem on account of these trips?

A. Members of the Commission are not entitled to subsistence when they are making trips, but they are entitled to their actual and necessary expenses of travel when making trips. There is no per diem and they are compelled to justify their expenses by submission of proper duplicate receipts covering every item.

Q. Then you did not derive any benefit to yourself on account of these trips, you did not make any extra money, you only received your salary?

A. No sir, only my salary and travelling expenses. If by benefit you mean to inquire whether I made any profit from that,

86 no. I perhaps ought to amend my statement by stating that members of the Philippine Commission are not entitled to travelling expenses, that is members of the original Taft Commission were not, I am not prepared to say whether under the present law members of the Philippine Commission are or are not.

Q. And the paragraph which says: "Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices which the City fathers dare not refuse from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good": Have you made any effort through secret agents and partners to sell to the city any land?

A. No sir.

Q. Did you have anything to do with any land sold to the city?

A. I conducted negotiations for the tract of land known as the Seldner Tract, adjacent to the tract of land known as the Exposition Grounds, some thirteen or fourteen thousand meters of which were subsequently transferred to the city of Manila. I also conducted preliminary negotiations looking towards the acquisition of a tract of land, a part of which is occupied by the present site of the Bureau of Science, some nine hundred and sixty meters of which lie within the line of the proposed boulevard there, east of the Exposition grounds.

87 Q. Besides you, is there any other who intervened in these negotiations?

A. Governor General Smith and Dr. Tavera began the negotiations for the tract known as the Seldner Tract, when Mr. Henry M. Jones figured as its owner, but we were unable to acquire it.

Q. Do you remember when it was that Dr. Tavera and Governor General Smith conducted these negotiations?

A. I believe in 1903, but it is easy to ascertain from the records of the Commission.

Q. And the negotiations conducted by you; when did that take place?

A. I should say at the end of 1903 or the beginning of 1904; that also appears in the records of the Commission, and can be submitted if desired.

Q. But about 1904, as you remember?

A. I think so, the actual transfer of the land was somewhat delayed but I think the negotiations for its purchase had terminated. There was some difficulty in regard to securing a clean title to it, after the final offer had been made.

Q. These negotiations conducted by Governor General Smith and by Dr. Pardo de Tavera, were they public or not?

A. I could not say; you understand by Governor General I refer to the present Governor General.

Q. And paragraph Six of this article which says: "Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people"; did you help or aid the concession or establishment of any hotel?

88 A. I voted in favor of several measures which have been passed by the Commission relative to concessions on the so-called Luneta Site.

Q. Did you only vote in the Commission to authorize the concession, or did you procure it?

A. Measures which have passed the Commission are simply measures authorizing the city of Manila to take certain action relative to the hotel site, and I voted in favor of these measures, which will be found of record.

Q. And you did not influence or urge the concession?

A. I did not.

Q. Can you tell the Court who ordered the slaughtering of cattle in the Bay of Manila.

A. No.

Q. Was it not the Director of the Bureau of Agriculture?

A. No sir.

Q. Do you know how that slaughtering of animals was carried on?

A. I know some of the events which preceded it.

Q. But you do not know who ordered the slaughtering of these cattle of Lack & Davis in the Bay of Manila.

A. I do not know that anyone ordered the slaughtering of these animals. I did not nor did the Director of Agriculture so far as I am able to learn.

Q. As Secretary of the Interior they did not inform you of that fact?

89 A. Of the fact that the animals were killed?

Q. Yes sir.

A. No. I got my first information of the fact they had been killed

from the papers of the city of Manila. The question of the killing of animals in Manila is under the control of the Municipal Board, unless they are killed as a sanitary measure by order of the Director of Agriculture.

Q. But the ordinances in the city of Manila regarding the health of Manila, is it not true that they are approved by the Bureau of Health before they go into effect?

A. No, they are prepared by the Director of Health, and they are approved by the Secretary of the Interior. They are subject to suggestion as to amendment by the Municipal Board, and in case the Municipal Board, the Secretary of the Interior and the Director of Health fail to agree, the Municipal Board has the right of appeal to the Governor-General, who has power to decide what the ordinance shall be.

Q. Is it not true you sent some persons to Mindoro for the purpose of acquiring some lands?

A. No.

Q. Mines?

A. No.

Q. Is it not true that you ascended the river Baco several times and that you have been to a place called Lummunyan in Mindoro and stayed at the house of an American there?

90 A. I have repeatedly ascended the Baco river in Mindoro, and I have stopped in a house belonging to an American in a place known to me as Chicago.

Q. Is it not true that you went there in company with Mr. Forbes at the time that American established himself there, at his request?

A. No sir.

Q. What is the name of that American?

A. Hamill I think is his name. At the time I went there he had been there for a long time.

Q. Is it not true that on this occasion you went through some of the forests there for the purpose of shooting?

A. I did.

Q. Is it not true that on one of these occasions — you were there at that place known as New Chicago you took a piece of earth and brought it along with you?

A. No, I never brought any earth from there.

Q. Do you know whether or not the meat of these cattle which were slaughtered in the Bay was brought here to market?

A. Does the gentleman want to know what I know of my own knowledge, or what I have heard?

Q. Of your own knowledge?

A. I do not.

Q. The expenses you have incurred in each one of these trips you made in the Philippine Islands as Secretary of the Interior, does it appear in any document of record?

A. Undoubtedly it will be found in the Auditor's Office.

91 Q. Can you indicate where those records are?

A. Certainly.

Q. Will you please tell us where we can find these records?

A. You can find them in the Auditor's Office.

Sr. MORENO: That is all.

ARCADIO ARELLANO, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?
A. Arcadio Arellano.
Q. Where do you live?
A. At No. 51 Calle San Pedro.
Q. What is your occupation?
A. Architect.
Q. Do you know the accused, Martin Ocampo?
A. Yes sir.
Q. Since when?
A. Since the year 1894 or 1895.
Q. Were you intimately acquainted with the accused during that period?
A. Yes sir.
Q. Do you know what the business of Sr. Ocampo is?
A. Yes sir.
Q. Will you state to the Court what his business is?
A. At present he is administrator and manager of the newspaper El Renacimiento.
92 Q. Where is that paper published?
A. At Calle Gunao, No. 26.
Q. In the city of Manila?
A. Yes sir.
Q. Do you know if Sr. Ocampo was manager or publisher of that paper on the 30th of October of this year?
A. Yes sir, he was.
Q. Do you know whether or not Sr. Ocampo owns an interest in that paper?
A. Yes sir, he is one of the shareholders of that paper.
Q. What share has he in the paper?
A. I believe he has a share of five hundred pesos.
Q. How often is El Renacimiento published?
A. Daily.
Q. You say Sr. Ocampo has a share of five hundred pesos in El Renacimiento: is that a joint stock company, a corporation or a partnership ?
A. I believe it is a philanthropic partnership.
Q. Do you know if it is registered in the Mercantile Registry?
A. I do not know.
Q. You say Sr. Ocampo is business manager of that paper: what are his duties as manager ?
A. To collect and to pay.
Q. Collect and pay what?
A. Collect the accounts that El Renacimiento might have.
Q. Does he collect from the subscribers to the paper?

A. Yes sir.

93 Q. What other duties has he: who hires and pays the editors of the paper?

A. I should like to make an explanation before answering this question.

Q. Very well.

A. El Renacimiento was founded on the idea of some young men who wanted to establish a better understanding between the people of the Philippine Islands and the Americans, who had but recently arrived here. With this great idea in view there was formed an association, and that group of young men formed the editorial staff of El Renacimiento, and as one left another came in and took his place.

Q. Well, the editors are paid, are they not?

A. Yes sir.

Q. Who pays them?

A. I believe the administrator or manager.

Q. And when a new editor enters into the service of El Renacimiento, who attends to the business of securing him?

A. I do not remember that this has ever happened, as I have stated before, from that group of young men when one leaves he is succeeded by another.

Q. Who are these young men that you say form a group and through patriotic motives publish this paper?

A. Do you mean at the present time?

Q. Yes, now.

94 A. Teodoro M. Kalaw, Fidel A. Reyes, Arsenio Luz, Pedro Aunario, Lope K. Santos, Faustino Aguillar, Sr. Licete, and others whose names I do not recall at this moment.

Q. Were they paid by the accused?

A. I suppose so.

Q. Were they in charge of the publication of this paper on the 30th of October of this year?

A. Yes sir.

Q. Now who are the other owners of El Renacimiento, if there are others, besides Sr. Ocampo?

A. The shareholders are Sr. Martin Ocampo, Sr. Manuel Palma, Angel José, Felipe Barretto, Gregorio Mariano and myself.

Q. I will hand you a paper, marked for identification Exhibit A, and will ask you to state if you know what it is?

A. This is a copy of the newspaper El Renacimiento.

Q. What date or issue?

A. 30th of October, 1908.

Q. That is El Renacimiento published at No. 26 Calle Gunao at the present time?

A. Yes sir.

Q. Of which Sr. Ocampo is one of the owners?

A. Yes sir.

Mr. GEORGE: That is all.

Cross-examination by Sr. MORENO:

Q. Can you tell us the conditions of that which you call an association for publishing and printing the newspaper El Renacimiento?
A. I know of no conditions at all.
Q. What relation have you got with this paper?
A. Shareholder.
Q. For what amount?
A. Seventeen hundred and fifty pesos.
Q. Have you received any dividend from that amount?
A. Up to the present time none.
Q. Did you intervene in any way in the management of that business?
A. I did not.
Q. Have they rendered you a statement of account for that money invested by you?
A. No.
Q. Under what condition then did you deliver that money?
A. It was for the purpose of establishing a better understanding between the Filipinos and the Americans.
Q. When you delivered that money, did you expect to gain from it?

Mr. GEORGE: Objected to as incompetent, irrelevant and immaterial.

The COURT: It is not proper cross-examination.

Q. Do you claim to have any rights over that money delivered by you?
A. No sir.
Q. So when you delivered that money to them you disposed of it for ever?
A. Yes sir.
Q. Without any expectation of recovering it again?
A. Yes sir.
Q. Can you tell me if the other members who founded that paper, did so under the same conditions and understanding as you did?
A. I cannot state as to that.
Q. Don Martin Ocampo is the administrator and manager of the publishing of that newspaper, the manager of the business in an economic way?
A. I believe so, in an economic way.
Q. Is it not true that Sr. Ocampo has nothing whatever to do with any of the articles published in that newspaper?
A. He has no intervention at all in that way.
Q. And the office of Sr. Ocampo is entirely different from that of the editorial department and the printing department?
A. It is entirely separate.
Q. The office of Sr. Ocampo is downstairs and the editorial office in the upper part of the house at No. 26 Calle Gunao?
A. Yes sir.
Q. Is it not true that the articles published in El Renacimiento

do not pass through the hands of Sr. Ocampo for inspection, or come to his knowledge?

97 A. What I know is that they pass through the Director of the newspaper.

Q. Is it not true that they do not go through the hands of Sr. Ocampo either before or after they are published?

A. They do not go through his hands at all.

Q. Is it not true that articles after leaving the hands of the editors pass the scrutiny of the Director of the paper, and from there go directly to the printers?

A. That is the practice that I have seen.

Q. That is what you have seen?

A. Yes sir.

Q. How often do you go to the office of El Renacimiento?

A. Very seldom.

Q. But on those few occasions you have been there, that is what you have seen?

A. Yes sir.

Q. Can you tell us what part of the newspaper comes under the control of Sr. Ocampo?

A. The economic part.

Q. Who has control of the commercial notices?

A. The administrator.

Q. And that is the only part of the newspaper which comes under the control of Sr. Ocampo?

A. Yes sir.

Q. Do you know who is in charge of the Spanish edition of that paper?

A. I believe Sr. Kalaw, Fidel A. Reyes, Sr. Licete, and others whom I do not remember at this moment.

98 Q. Have Srs. Lope K. Santos and Faustino Aguiller anything to do with the Spanish edition of that paper?

A. No sir, not to my knowledge.

Q. Is it not true that there are two different newspapers, El Renacimiento and Muling Pagsilang?

A. There are two different newspapers.

Q. Is it not true that the newspaper Muling Pagsilang is a newspaper totally separate from El Renacimiento?

Mr. GEORGE: Objected to as immaterial as far as this case goes.

The COURT: Objection sustained as immaterial.

Q. Is it not true that the newspaper Muling Pagsilang is totally different from the newspaper El Renacimiento, in its personal and editorial department?

A. Yes sir.

Q. Is it not true that Sr. Ocampo has no control or inspection of the typesetters of the newspaper?

A. Technical or economic?

Q. Technical.

A. No, no intervention at all.

Q. Do you know if Sr. Ocampo as administrator inspects the newspaper before it is distributed to the public?
A. No sir.
Q. Do you mean you do not know, or what?
A. I mean that he does not examine or inspect the paper before it goes to the public.

Sr. MORENO: That is all.

99 Redirect examination by Mr. GEORGE:

Q. What is the name of this association you speak of as publishing El Renacimiento?
A. I believe it is called Renacimiento.
Q. Is it registered under that name or any other name in the Mercantile Register?
A. No sir.
Q. Do you know who owns the building in which this paper is printed, at No. 26 Calle Gunao?

Sr. MORENO: Objected to as immaterial.
The COURT: Objection sustained.

Q. You say you have not received any return from the money you invested in that paper?
A. Not one cent up to the present time.
Q. Is it not true, that all the profits from the publication of that paper have been reinvested in the plant and to the improvement of the paper?
A. I believe so.

Mr. GEORGE: That is all.

Cross-examination by Sr. SALAS:

Q. In saying that all the profits have been reinvested for the improvement of the paper, do you refer to the buying of material, paper, machinery, type and other necessities of a newspaper, and did they inform you about this?
A. No sir, they did not inform me.
Q. How do you know about it then?
A. Through the administrator.
100 Q. In what way, by hearsay or because he informed you verbally.
A. He informed me verbally.

Sr. SALAS: I ask that all the testimony on this point as to the reinvestment of profits of the paper be stricken from the record, as hearsay.

The COURT: Who do you mean by the director of El Renacimiento?
A. The director of the Spanish edition, Sr. Kalaw.
The COURT: And when you use the word "administrator," do you mean the accused, Sr. Ocampo?
A. Yes sir.

The COURT: The motion to strike out is denied.
Sr. SALAS: Exception.

Q. You have mentioned the name of Pedro Aunario; has he got anything to do with the newspaper "El Renacimiento" or "Muling Pagsilang"?
A. He is the director of "The Renacimiento."
Q. What is "The Renacimiento," is that the same paper as "Muling Pagsilang?"
A. No sir.
Q. Is it "El Renacimiento" itself?
A. No sir.
Q. Do you mean to say that it is an entirely distinct newspaper?
A. Yes sir.

Sr. SALAS: That is all.

The hearing was then suspended until half past two o'clock in the afternoon.

101 Afternoon Session.

Pursuant to adjournment the case was called this a. m. with the same appearances.

The COURT: Sr. Velasco asks leave to withdraw as assessor, as he was a member of the Municipal Board and had something to do with the sale of the Seldner Tract of Land.
Mr. GEORGE: The Government has no objection to Sr. Velasco sitting.
Sr. DE LA ROSA: And we have no objection to his withdrawing if he desires.
The COURT: I do not think there can be any objection to Sr. Velasco serving as an assessor.

ENRIQUE BARRERA Y CALDES, called in behalf of the Government being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?
A. Enrique Barrera y Caldes.
Q. Where do you live?
A. At No. 202 Calle Anda, Manila.
Q. Do you hold any official position?
A. Notary Public.
Q. Any other public duty?
A. Mercantile Registrar.
Q. For the city of Manila, or for the Philippine Islands?
A. For the province of Manila, according to the Code of Commerce.
102 Q. Do you know the accused, Martin Ocampo?
A. Yes sir.
Q. How long have you known him?

A. Many years.

Q. Do you remember if Martin Ocampo was in your office for any purpose on or about the 1st of January, 1908?

A. Yes sir, he was there, but I do not remember the exact date.

Q. You remember the occasion of his being there?

A. Yes sir.

Q. What was the occasion?

A. It was for the purpose of purchasing some real estate, a house, and the mortgage of the same.

Q. Where was the property located?

A. At Calle Gunao, but I cannot recall the number.

Q. Could you by reference to any document refresh your recollection as to the property, and the date also?

A. Yes sir, by the document I authorized.

Q. I will hand you a document, and will ask you if that is a copy of the deed you refer to?

A. This is a copy authorized and signed by me of the original, which is deposited in my office.

Q. Can you state now the date that Sr. Ocampo was in your office, and also the property that he wished to purchase?

A. It was on the 28th of January, 1907.

103 Q. I wish to know whether or not Sr. Ocampo at that time made any statement to you as to his business relation or connection with the newspaper El Renacimiento?

Sr. De la Rosa: The defence asks that the whole testimony of this witness be stricken out as immaterial.

The Court: So far yes, but it may become material later on.

Sr. De la Rosa: We ask that it be stricken from the record.

The Court: Motion denied for the present, but it will be stricken out if the Government does not show the connection.

Sr. De la Rosa: We reserve the right to except later on.

A. No sir. Sr. Ocampo wanted to make a bargain of buying this house and tried to mortgage the same, and when he went there to make the deed, and at my indication, he told me that it was to be put in his name as administrator of El Renacimiento, and on this occasion in order that the deed might be registered I asked Sr. Ocampo how he could prove that he was the administrator, and to ascertain if the entity El Renacimiento was a commercial organization, and Sr. Ocampo answered me negatively and told me to make out the deed in his name.

Q. Do you recollect what property this was, after refreshing your memory?

A. Yes sir, a house on Calle Gunao, No. 26, which was the number that the former deed of said property had.

Q. Now state whether or not that Mercantile Registry of yours knew any company, or partnership, or any other legal entity as registered under the name of El Renacimiento?

104 A. No sir.

Sr. De la Rosa: I ask to have the testimony of this witness stricken from the record.

The COURT: Motion denied.
Sr. DE LA ROSA: Exception.

Mr. GEORGE: Did you use any force, menace, threat, violence, or hold out any promise to the accused to get him to make this statement you have testified to?

A. No sir, there was no necessity of doing that.

Mr. GEORGE: That is all.

Cross-examination by Sr. DE LA ROSA:

Q. In the document you have just mentioned, does the name of Sr. Ocampo appear as administrator or proprietor?

A. I have just informed you that at the time the document was drawn, and when I asked Sr. Ocampo in whose name he wanted the house to be put, he told me to put it in his name as administrator of El Renacimiento, but as he was unable to show me any document to prove that he was the administrator of that society he then told me to put it in his own name, as it is placed in the deed.

Q. Before this conference that you had with Sr. Ocampo, was he in the habit of going to your office as a client of yours?

A. No sir.

Q. Was this document drawn in the same sense as expressed by Sr. Ocampo, and in the sense you have just expressed?

A. Yes sir.

105 Q. Did you have any other interview with Sr. Ocampo, before coming now to testify?

A. No sir, I did not have any interview at all, but certain correspondence passed between him and me in regard to a communication in the newspaper El Comercio, asking me if I had ever given a copy of this document to the person who wrote this communication in El Comercio, because El Comercio had published the deed in its entirety, and he also asked me whether I had stated that El Renacimiento not being an organization that he had requested that the deed be placed in his name, and third, that to prove his personality he had stated that he would have an understanding with El Renacimiento through another deed. I answered Sr. Ocampo affirmatively in regard to two of these points, that is to say that I did not furnish a copy of that deed, and in regard to the second point just what I have stated here and in regard to the third point that it was not true that he had informed me that he would have an understanding with El Renacimiento to settle the matter of his personality. That is the answer I made him.

Sr. DE LA ROSA: That is all.

SANTIAGO PEREZ, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?

A. Santiago Perez.

106 Q. Where do you live?

A. At Pasay.

Q. What is your occupation?
A. Employee in the office of a newspaper situated at No. 26 Calle Gunao.
Q. What is the name of the paper?
A. Renacimiento.
Q. El Renacimiento?
A. No sir, the English edition called "The Renacimiento".
Q. Is there a Spanish edition also called "El Renacimiento"?
A. Yes sir.
Q. Did you have anything to do with the Spanish edition of El Renacimiento?
A. I am in charge of the distribution of it.
Q. Who employs you and who pays you for distributing the Spanish edition of El Renacimiento?
A. Sr. Martin Ocampo, the administrator.
Q. Do you mean the accused here?
A. Yes sir, that is the gentleman sitting there (indicating).
Q. How long have you been employed in circulating the paper El Renacimiento?
A. Over five months.
Q. To how many people do you send this paper, I mean the Spanish and Tagalog edition?
A. Over fifty-two hundred.
Q. Where are these people to whom you send this newspaper?
107 A. Here in the city, and also in the provinces.
Q. How often do you send the paper out; how often is it published and distributed; daily, weekly or monthly?
A. Daily.
Q. How long have you been sending it out daily?
A. As I have stated over five months.
Q. Do you remember the sending of it out on the 30th of October of this year, the edition of that day?
A. I sent it out every day with the exception of Sundays.
Q. Now in addition to the people to whom you send the newspaper, I wish to know whether or not the paper is sold on the streets?
A. Yes, it is sold also on the streets by boys.
Q. Where is this paper printed?
A. At Calle Gunao.
Q. Where does the accused, Sr. Ocampo, have his office as administrator or manager of the paper?
A. In the lower part of the building.
Q. What building?
A. That house at Calle Gunao, No. 26.
Q. Are there any other men working under you as distributors?
A. The newspaper men who carry the paper to subscribers.
Q. How many men are employed under you?
A. Over eighteen men.
Q. Who employs these men and pays them?
A. The paymaster there at the office of the administrator.

Q. Is Sr. Ocampo there?

A. Yes sir.

108 Q. He furnishes the money?

A. Yes sir.

Q. Who collects the money from the subscribers to whom you distribute the paper?

A. The collectors.

Q. To whom do they turn that money over when they collect it?

A. To the administrator.

Q. Sr. Ocampo, the accused here?

A. Yes sir.

Q. Who employs and who pays these collectors?

A. They get ten per cent of the collections.

Q. Who allows them to take ten per cent of the collections?

A. Sr. Martin Ocampo, that is the rule there.

Q. They have some typesetters there do they not, who set type for the printing of the paper?

A. Yes sir.

Q. Who employs and pays these typesetters?

A. The administrator.

Mr. GEORGE: That is all.

Cross-examination by Sr. SALAS:

Q. During those five months that you have been employed in El Renacimiento, did you go there every day, have you never been away a day?

A. I went there every day during those five months.

Q. At what time do you generally go to that place?

A. About two, three or four o'clock in the afternoon.

109 Q. Which of these three hours do you go oftener there?

A. It is not the same every day, sometimes two o'clock, sometimes half past two, sometimes three, half past three or four o'clock.

Q. The question is: which of these hours do you go there the oftenest?

A. More often at three o'clock.

Q. And when you go there at three o'clock, how do you find the paper; is it printed and finished, or just about to be done?

A. It is not finished yet.

Q. You are also in charge of the boys who distribute the newspapers, and those who sell the paper also?

A. I am only in charge of the distribution of the paper, I am not in charge of those who sell the paper on the streets.

Q. The newspaper which has to be distributed daily; does Sr. Ocampo have an opportunity of examining the paper before it is turned over to the distributors?

A. I have not seen Sr. Ocampo reading it.

Q. You have stated that you distributed the number of the paper issued on the 30th of October, is that not so?

A. Yes sir.

Q. Do you state that because you remember that fact very well, or because somebody told you about it?

A. Nobody told me.

Q. Do you remember what day of the week the 30th of October came on?

110 A. I do not remember what day of the week it was.

Q. Do you remember what time of day it was when you made the distribution of the paper on that day?

A. At half past eight o'clock that night.

Q. Is it not true you only say that because you are in the habit of distributing the paper every day?

A. Yes sir.

Q. Did you take especial notice of that particular number of the newspaper which you distributed on the 30th day of October of this year?

A. I gave it to the distributors.

Q. How many times have you received payments from Sr Ocampo?

A. From the month of July in which I joined that paper, I have received my salary at the end of each month, July, August, September and October.

Q. Is it not true that the distributors receive their salaries from you?

A. No sir, there is a paymaster especially for the distributors.

Q. At what time do they generally finish printing the newspaper El Renacimiento?

A. About half past eleven or twelve o'clock at night.

Q. According to that the subscribers must receive their papers after that time you say the printing of the paper is finished?

A. Yes sir, the distributors do not go out at the same time, but one after the other.

111 Q. You have stated that of the newspaper El Renacimiento there are printed some fifty-two hundred copies; on what do you base that statement of yours?

A. Because I am the one who makes up the list for every district, of the number of papers to go to each district, as well as to the provinces.

Q. From what data do you get the information by which you make up these lists of distribution?

A. The clerk furnishes me with it, and I make a copy from the copy furnished me by the clerk.

Sr. SALAS: That is all.

C. P. SHUMAN, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?

A. C. P. Shuman.

Q. Where do you live?

A. No. 265 Calle Marcelino.

Q. What is your occupation?

A. Superintendent of the Mailing Division of the Postoffice.

Q. As superintendent of the mailing division of the postoffice, do you know whether or not the issue of the 30th of October last of the Renacimiento newspaper was sent out to the provinces through the postoffice?

A. Yes sir, it was.

112 Q. Can you tell about how many copies of that paper were sent to the provinces of the Philippine Islands?

A. I can tell how many pounds were mailed of that issue, and I know about the weight of a single copy.

Q. Estimating it in that way, will you state to the court about how many copies of that issue of the paper were sent out to the provinces?

A. Our receipts show that the weight taken on that day of this particular issue of El Renacimiento was two hundred and twenty-three pounds, which were mailed, and there are about eight copies to the pound, and this would make between seventeen hundred and eighteen hundred copies mailed for the provinces.

Q. To what places in the provinces were these papers sent?

A. The papers were addressed to various points in the provinces, I should say to practically all the provinces, they go to the northern and southern provinces and a few more to the lake points and points on the railroad they are distributed generally through the provinces and I should think reach all of them.

Q. I will ask you to state if they are sent anywhere else in the Philippine Archipelago besides the provinces of the Island of Luzon?

A. Yes sir, I have seen copies for Zamboanga, the Moro Province and for Calbayog and points in the small provinces, also to points in Negros and in Leyte.

Mr. SOUTHWORTH: That is all.

113 Cross-examination by Mr. DE LA ROSA:

Q. What makes you remember so well that day, October 30th, in which you say so many copies of this issue of El Renacimiento were sent to the provinces?

A. Our receipts show, a receipt is given the publisher when he mails the paper, showing the number of pounds mailed of each issue.

Q. Have you a book under your control in which is put down the number of copies of the newspaper sent daily to the provinces?

A. We do not keep a record of the number of copies sent, we only know the number of pounds sent.

Q. Is it not true that besides El Renacimiento there are other newspapers which are sent to the provinces?

A. Yes sir.

Q. And is it not true that as a matter of fact all printed matter is always weighed at the postoffice and then distributed to the provinces, and no one knows how many copies of each paper there are?

A. Not exactly, we do not count the copies.

Q. Do you remember under what class of mail El Renacimiento is registered?

A. Second class mail.

Q. And "Vida Filipina," under what class is that registered?

A. All such publications have the privilege of mailing their papers at second class rates, and when mailed at second class rates there is no postage paid, not stamps used, they pay pub-
114 lishers' rates and pay in cash. They bring their papers to the postoffice and they are paid for in cash at the time of mailing, and stamps are not required as on other mail matter.

Q. And in order to know just exactly what is the weight of this second class mail, mixed up, you put it on the scales and weigh it, to see how many pounds there are?

A. We weigh a copy of each paper as it comes in separately, so we know about how many pounds of each paper is mailed.

Sr. De la Rosa: That is all.

Newton W. Gilbert, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Southworth:

Q. State your name?

A. Newton W. Gilbert.

Q. Where do you reside?

A. I reside in Manila.

Q. How old are you?

A. Forty-six years of age.

Q. What official position do you hold, if any?

A. Member of the Philippine Commission.

Q. Do you know Dean C. Worcester?

A. Yes sir.

Q. How long have you known him?

A. Something over three years personally.

115 Q. During that time have you had occasion to observe the official life of Mr. Worcester on the Philippine Commission, and as Secretary of the Interior of the Philippine Islands?

A. During the greater part of that time, yes, sir.

Q. I will ask you if you are familiar with the duties of Mr. Worcester, both as Commissioner and as Secretary of the Interior of the Philippine Islands?

A. Yes sir, I am quite familiar.

Q. I will ask you if you know anything of the duties of Mr. Worcester in connection with the Igorotes in the mountains of Benguet, as Commissioner or as Secretary of the Interior of the Philippine Islands?

Sr. De la Rosa: I object to these questions as altogether leading, they put the answer right in the mouth of the witness.

The Court: Objection overruled.

Sr. De la Rosa: Exception.

A. Yes, I know.

Q. I will ask you to state whether or not it has come within your knowledge that Mr. Worcester has made trips over the Philippine Islands, and especially in the mountains of Benguet?

A. Yes sir, he has made such trips, the law requires him to make them, and he has made them frequently.

Q. Now I will ask you if within the past three years, the time you say you have known Commissioner Worcester personally, if
116 you know of his acts generally as a man and as a citizen of the Philippine Islands?

A. Yes sir.

Q. How long have you served on the Philippine Commission?

A. A little less than five months.

Q. During your service on the Philippine Commission have you been thrown in contact personally and officially with Commissioner Worcester?

A. Yes sir.

Q. I will show you an article purporting to be an editorial in the newspaper El Renacimiento of date October 30th, 1908, marked for identification Exhibit A., and will ask you to state whether or not you have ever seen that article before?

A. Yes sir, I have.

Q. State whether or not you have ever read or heard read that article?

A. Both, except that I cannot read it as exactly probably as if I were more familiar with the Spanish language, but I have read it and heard it read, both.

Q. I will ask you to state, taking into consideration your knowledge of Commissioner Worcester personally and your knowledge of his official acts and your association with him on the Philippine Commission, to whom did you understand that article to refer when you read it or heard it read?

Sr. SALAS: Objected to on the same grounds as before when Commissioner Worcester was being examined by the Prosecuting Attorney this morning, and as being incompetent, and for the
117 further reason that it only expresses the personal opinion of the witness.

The COURT: Objection sustained.

Mr. SOUTHWORTH: Exception.

Cross-examination by Sr. SALAS:

Q. Can you give us an idea of the knowledge that you have of the Spanish language?

A. I think I can demonstrate pretty plainly.

Q. How long is it since you have learned to talk Spanish?

Mr. SOUTHWORTH: Objected to as immaterial, there is nothing to which the witness has testified to make such a question competent.

The COURT: You may get the information you want in the same way you did this morning.

A. I do not talk Spanish well now, I talk it a little, my Spanish is what I call Cochero Spanish.

Q. The first time you became familiar with the article in question in what language did you learn it?

A. I have not learned the article.

Sr. SALAS: That is all.

JAMES F. SMITH, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?

A. James F. Smith.

118 Q. Where do you reside?

A. At the Malacañan.

Q. What is your official position?

A. I am at present acting as Governor General of the Philippine Islands, and am a lawyer by profession.

Q. How long have you been Governor General of the Philippine Islands?

A. Since September, 1906.

Q. Before that time did you hold any official position in the Philippine Islands?

A. I was Secretary of Public Instruction from January, 1902, I think.

Q. How long have you lived in the Philippine Islands?

A. Excluding my vacation, since June 30th, 1898.

Q. Do you know Commissioner Dean C. Worcester?

A. Yes sir.

Q. How long have you known him?

A. Since 1901, I think, after my coming to take charge of the Custom House in Manila.

Q. Have you served with him since that time in any official capacity in the Philippine Islands?

A. Yes, as a member of the Philippine Commission since January, 1903, I think.

Q. Since about 1901, have you been familiar with Mr. Dean C. Worcester's official life in the Philippine Islands?

A. Reasonably so, Sir.

119 Q. Have you had knowledge of his personal life in the Philippine Islands?

A. Yes, fair knowledge, we are both residents of the city of Manila.

Q. Do you know what his duties are as Secretary of the Interior of the Philippine Islands, in reference to the Igorot tribes of Benguet?

A. Under the law he is required to visit them once a year, to take proper steps to prevent head-hunting and crime among them, and to make such recommendations for their advancement in civlization as may seem proper to him.

Q. Is it within your knowledge that Commissioner Worcester has visited the mountains of Benguet for this purpose?

A. I think every year he has visited the mountains of Benguet,

there may have been one year he missed, but I am not certain about that.

Q. Do you know whether it comes within his duties and control as Secretary of the Interior of the Philippine Islands, or as member of the Philippine Commission, to legislate or participate in legislation relating to the mining interests of Benguet, the mineral land of Benguet?

A. He participates in his duty as Commissioner in that legislation.

Q. Do you know under whose control and supervision the Mining Bureau of the Philippine Islands comes?

A. The Secretary of the Interior, at present Dean C. Worcester. It is not the Mining Bureau at present, it is now a division of the Bureau of Science if I remember correctly.

120 Q. Does the Bureau of Science come under his supervision as Secretary of the Interior of the Philippine Islands?

A. Yes sir.

Q. I will ask you to state whether or not you know of any duties which Mr. Dean C. Worcester has to perform as Secretary of the Interior of the Philippine Islands, or as a member of the Philippine Commission, in regard to the health laws or ordinances of the city of Manila, or of the Philippine Islands?

A. The Bureau of Health is under his special jurisdiction, which is both insular in its action and municipal as well. Practically all health matters are under the jurisdiction finally of the Bureau of Health, and the Secretary of the Interior is head of that department.

Q. I will ask you if the question of regulating the admission of cattle into the Philippine Islands, or preventing the entry of diseased cattle into the city of Manila or the Philippine Islands, comes under the jurisdiction of Mr. Dean C. Worcester?

A. That does not come now under the jurisdiction of the Bureau of Health or of the Bureau of Science, that is under the original jurisdiction of the Bureau of Agriculture, but both when the Bureau of Health and the Bureau of Science had jurisdiction of it, it was still in the Department of the Interior, and under his jurisdiction as Secretary of the Interior.

Q. Do you know anything of Commissioner Worcester, as Secretary of the Interior, importing fish eggs into the Islands for
121 the purpose of supplying the rivers in the mountains of Benguet with fish?

A. If my recollection s-rves me well he was the first to import, I think, I would not be sure, from Japan fish eggs that way with a view to propagating them in the streams of Benguet, where there is almost an entire lack of fish for the people.

Q. Do you know anything in regard to Mr. Worcester as a scientist, or his reputation as a man who is devoted to science?

A. Yes, I know that he is a scientist along certain lines, and very much interested in science on general lines.

Q. Do you know anything of any visits made by Commissioner Worcester to the islands of Mindoro and Mindanao within the last few years?

A. He does make visits to Mindoro and Mindanao.

Q. I will ask you to state whether or not a certain land transaction

in which Commissioner Worcester took part is within your knowledge, and if so please state whether Commissioner Worcester was connected with that land transaction in the city of Manila?

A. He was, for the Philippine Commission.

Q. I will ask you to state whether or not it is a fact that Commissioner Worcester, with other members of the Commission, took part in some legislation before the Philippine Commission with reference to the location of a hotel site on some of the filled-in land of the city of Manila, or of the Insular Government?

122 A. He took part in discussions on that subject, as to the advisability of establishing a modern hotel on the new filled-in land, which is really the extension of the Luneta.

Q. I will ask you to state whether all these things about which you have spoken are matters of common knowledge to the city of Manila and the Philippine Islands?

A. Certainly among my friends and acquaintances they are. That involving the hotel site discussion might not be so generally known. Secretary Taft suggested that one of the greatest necessities here was a modern hotel, and when that matter came up for discussion Mr. Worcester and the others did not take as active a part in it as I did.

Q. I will ask you to state whether or not you know of any other man in the Philippine Islands who had under his control the charge of the Igorotes in the mountains of Benguet, and of the mining or mineral lands of Benguet?

A. No sir, not directly in charge, with the responsibility of taking an active interest in such things. Of course there are miners in Benguet who take an interest in mining.

Q. I will ask you to state whether you know if there is any other man in the Philippine Islands who devotes himself to the study of science and engages in scientific labors and at the same time imports fish eggs into these islands?

A. The latter would exclude all the officials I know of, the importation of eggs, but there are officials of the Government

123 who are dedicated to scientific work.

Q. Do you know of any other person, or official, in the Philippine Islands, except Commissioner Worcester, who has under his control the mines and mining lands and forestry in Mindoro and Mindanao?

A. Jointly no. There is a bureau chief who has charge of forestry, and also another bureau chief who has charge of the other matters you mention.

Q. Now I will ask you this, taking into consideration all of the matters to which I have called your attention, whether or not there is any other man in the Philippine Islands, other than Commissioner Worcester, to whom the language of the article complained of could apply?

Sr. SALAS: Objected to for the same reason as given this morning.

The COURT: Objection overruled.

Sr. SALAS: Exception.

A. There is no man whose official life in the Philippine Govern-

ment could be applied to all these things conjointly, except Dean C. Worcester. There are some to whom a part might apply, but not taken conjointly with all the other things you have mentioned.

Q. I will now show you what purports to be an editorial in the newspaper El Renacimiento in its issue of October 30th, 1908, marked for identification Exhibit A., and will ask you to state to the Court whether or not you have seen that article before?

A. Yes sir, I have.

Q. I will ask you to state if you have read that article, which is the article complained of?

124 A. Yes, I think the day after it was published, or the day after that.

Mr. SOUTHWORTH: You may take the witness.

Cross-examination by Sr. SALAS:

Q. You have stated that all you have testified to could not be applied to anybody else except Dean C. Worcester. To what do you refer, to facts or to impressions?

A. To facts, I mean by that the fact that in his department is the mining division, the scientific division, the ethnological division for the study of the wild people of these islands, and especially charged with the promotion of civilization among them; all such things taken together as facts.

Q. Could Commissioner Worcester, as Secretary of the Interior, make trips of his own act and volition without an especial order of the Commission?

A. Yes, the law requires him to make these journeys independent of any order, and it is his duty to obey unless prevented by sickness; that is these journeys for the purposes I have mentioned, viz., visiting the Igorotes and non-christian tribes in the provinces. That is under a special act of the Government, and apart from that law he is also charged with the official responsibility of the various bureaus and offices of his department, and it is his duty, when he thinks it necessary, to inspect the work of those provinces where any of his bureaus or offices may be carrying on the work of

125 the Government. That is not obligatory by law, but it is obligatory on him by virtue of the office which he holds.

Q. Do you mean to say that whenever Commissioner Worcester desires to make such trips, there is no necessity of informing the Executive about it?

A. All officials, that is commissioners and secretaries, when intending to be absent from the city of Manila, inform me of their proposed absence and ask me if there is any objection on my part to their departure.

Q. When any of the commissioners make any of these trips, out of what funds would the expenses of the voyage be charged?

A. Properly chargeable, if the official desires to do so, as traveling expenses while engaged on official business.

Q. Do any of the officials receive a per diem allowance whenever they make these trips?

A. I know of none. They would recover their actual expenses, if they chose to present their bill, incurred in the performance of duty obligatory by law. What they do individually I do not know, but they would be entitled to it.

Q. What I want to know is, whether or not there is any law which provides for any extra allowance for any person making such trips?

A. My impression is that the appropriation bill contains an appropriation for travelling expenses in specific terms, and may also for a per diem allowance. The appropriation bill will show
126 that better than I can.

Q. Will you kindly explain if all the acts mentioned by you, in regard to Commissioner Worcester, were done with your knowledge, or with the consent of the Commission, or the Chief of the Executive Bureau?

A. He has made no journeys of which I am aware, since I have been Governor General, without my knowledge, and without asking whether or not there was any objection on my part. As to the Commission, their consent was unnecessary, as they had already expressed in the form of law that he had to make these journeys.

Sr. SALAS: That is all.

GREGORIO ARANETA, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. Gregorio Araneta.
Q. Where do you reside?
A. At No. 25 Calle San Sebastian.
Q. What official position do you hold?
A. Secretary of Finance and Justice.
Q. How long have you been Secretary of Finance and Justice of the Philippine Islands?
A. From the 1st of July of this year.
Q. Prior to that time did you hold any official position in the Government of the Philippine Islands?
A. Yes sir.
127 A. In June, 1899, if I am not mistaken, I was appointed Justice of the Supreme Court, and in June, 1901, I was appointed Solicitor General, which office I held until July 1st, 1906, when I was appointed Attorney General, and this office I held until my appointment as Secretary of Finance and Justice.
Q. Do you know Commissioner Dean C. Worcester?
A. Yes sir.
Q. How long have you known him?
A. From the year 1899, if I am not mistaken, the first days of the Commission.
Q. State to the Court whether or not you have been familiar with the official life of Commissioner Worcester since he has been in the Philippine Islands?

A. Yes sir.

Q. Please state whether or not you have had personal intercourse and personal relations with Commissioner Worcester since he has been in the Philippine Islands?

A. I have had friendly relations with him, nothing else.

Q. I will show you what purports to be an editorial published in the newspaper El Renacimiento, under date of October 30th, 1908, and will ask you to state if you have seen that article before?

A. I have read this article before now.

Q. I will ask you to begin with the words "Subiendo a las montañas", and to read to the words "de la sangre del país"; please read it over?

A. I have read it.

128 Q. I will ask you to state now whether, from your knowledge of the people of the city of Manila or of the Philippine Islands, there is any other man, except Commissioner Worcester, to whom that language could apply?

Sr. SALAS: Objected to for the same reason as given before.

The COURT: I don't think you have laid the foundation for this witness to testify as to that.

Mr. SOUTHWORTH: I will withdraw the question for the present.

Q. I will ask you to state if you have any knowledge of Commissioner Worcester having visited the mountains of Benguet, in order to look after the tribes of Igorotes there?

A. I know that.

Q. I will ask you to state whether or not you know that the ordinances of the city of Manila, and the laws of the Philippine Islands, in regard to health matters, come under the supervision of Commissioner Worcester, as Secretary of the Interior of the Philippine Islands?

A. I know that such matters are under the supervision and control of the Bureau of Health, which is under the control of Commissioner Worcester, as Secretary of the Interior.

Q. I will ask you to state whether or not you have any knowledge of Commissioner Worcester as a man of science, or as importing fish eggs to the Philippine Islands?

A. I know that Commissioner Worcester is a scientific man, but I do not know whether he has imported fish eggs, personally I have no knowledge of that.

129 Q. I will ask you to state whether or not you knew of it before you saw this editorial in the paper which I have just shown you?

A. In regard to what?

Q. In regard to importing fish eggs into the Philippine Islands?

A. I have heard people talking about that.

Q. I will ask you to state whether or not the control of the mining industries and forestry in the islands of Mindoro and Mindanao comes under the control and supervision of Mr. Worcester, as Secretary of the Interior of the Philippine Islands?

A. Yes sir, they do.

Q. State whether or not you know of any visits which Mr. Worcester has made to Mindoro and Mindanao in regard to mineral lands or forestry?

Sr. De la Rosa: Objected to as leading.

The Court: It is only directing the attention of the witness to one point, but I do not think it is leading, the objection will be overruled.

Sr. De la Rosa: Exception.

A. I know that Commissioner Worcester, as Secretary of the Interior, made trips to Mindoro as well as to Mindanao on account of his duties, and these trips must have been made for the inspection of non-christian tribes, and at the same time for the purpose of inspecting those islands in regard to the branches and offices under his control, for example, mines, public lands and public forests.

130 Q. I will ask you to state to the Court whether or not you have any knowledge of Commissioner Worcester participating in the sale or purchase of some lands from individuals for the city of Manila, or for the Insular Government?

A. As Secretary of the Interior matters pertaining to public lands come under his control and supervision, and he is in charge of the sale of town sites; if your question refers to that I believe in some way he must have intervened. If you refer to the sale to the Government of some particular piece of land, I do not know.

Q. I will ask you to state if you remember as to whether or not, in your capacity of Solicitor General, you prepared a deed for Mr. Worcester in regard to the sale of some land by Mr. Seldner and Sr. Arcadio Arellano adjoining the old Exposition Grounds in the city of Manila?

A. I remember well that when I was Solicitor General I prepared a document of sale of some land in Malate, at Calle San Andres, which I believe was destined for agricultural experiments.

Q. Do you remember his connection with another piece of land that was bought for the purpose of adding to the Exposition Grounds, and forming a boulevard for the city of Manila?

A. Yes, I remember that now. The first land you referred to was bought from a neighbor in Malate, and the other belonged, I believe, to Mr. Seldner.

131 Q. I will ask you if there is within your knowledge a transaction in which Mr. Worcester, as a member of the Commission, participated, in regard to the location of a proposed hotel on some of the filled-in land of the city of Manila?

A. I cannot give an exact answer as to that, as I do not know whether you refer to the filled-in land which is an extension of the Luneta; if this is what you mean the Commission intervened as well as Mr. Worcester.

Q. I will ask you now to take that article, marked for identification Exhibit A., and referring to the portion to which your attention was formerly directed, will ask you to state whether or not, considering your knowledge of Mr. Worcester as a Commissioner and as Secretary of the Interior, and personally, and from your knowl-

edge of the transactions which are set forth in the language referred to, there is any other man in the Philippine Islands to whom that language could apply?

A. I believe the language of the article could not refer to any other person than Secretary Dean C. Worcester.

Mr. SOUTHWORTH: You may take the witness.

Cross-examination by Sr. DE LA ROSA:

Q. You have just stated that you know that Commissioner Worcester made trips to Benguet and to the provinces, will kindly state how you know that?

A. Because his office is near to mine, and on occasions when I would inquire for Mr. Worcester they would tell me that he was absent on a trip, sometimes to Mindoro, sometimes to Min-
132 danao, or in the mountain districts of Benguet, Lepanto-Bontoc, or Nueva Vizcaya; and I know also by the reports which he made to the Commission, and also from former reports in which he made special mention of his journeys.

Q. Then you mean to say in regard to these trips made by Mr. Worcester, that you learned of them from the clerks of his office?

A. I know of the last trip he made officially, that to the province of Mindanao, and in regard to the other trips from information I received from his office, and also from what I have read in the reports.

Q. Can you tell us what reports these are?

A. I mean the reports presented by Commissioner Worcester to the Commission as Secretary of the Interior, and other reports prior to that.

Q. Do you remember the date of the last report presented by Mr. Worcester?

A. I do not remember the exact date of the last report, but I read it about fifteen days ago.

Q. Then you mean to say that prior to the reading of that report, all your knowledge of the trips made by Mr. Worcester was obtained by information from others, as you have just stated?

A. Yes, because I have never seen him personally making these journeys.

Q. You have stated also about the article in question in El Renacimiento, Exhibit A., can you tell us when you read that ar-
133 ticle?

A. I believe about the 2nd or 3rd of this month, but I am not sure.

Sr. DE LA ROSA: That is all.

Redirect examination by Mr. SOUTHWORTH:

Q. Where did you read that article, Exhibit A., to which you have referred?

A. I read it in the office of the Governor General, who called my attention to it as Secretary of Finance and Justice.

Mr. SOUTHWORTH: I will now offer in evidence the exhibits marked A., B., and C.

Sr. SALAS: We object to all three as incompetent and immaterial, and also on the ground that they have not been properly identified.

The COURT: So far as the objection as incompetent and immaterial is concerned, it is overruled. In regard to identification, I think Exhibit A. has been sufficiently identified, and the objection on that ground is overruled. In regard to Exhibits B., and C., I do not think they have been sufficiently identified.

Sr. SALAS: Exception.

Mr. SOUTHWORTH: If necessary, we will identify Exhibits B., and C., later on.

The hearing was then adjourned until ten o'clock a. m., November 24th, 1908.

134 NOVEMBER 24TH, 1908.

Pursuant to adjournment the case was called this a. m., Mr. Jesse George, Prosecuting Attorney for the City of Manila, and Mr. L. M. Southworth, Assistant Prosecuting Attorney for the City of Manila, appeared in behalf of the Government; Sr. Roberto Moreno and Sr. Fernando Salas on the part of the defendant, Martin Ocampo.

The COURT: It appears from the testimony of Secretary Worcester in regard to Exhibit C., to which objection was made on the ground that it was not properly identified, that it has been sufficiently identified, but Exhibit B. is not.

Sr. SALAS: We object to both Exhibit C. and Exhibit B., as irrelevant and immaterial.

The COURT: Objection overruled.

Sr. SALAS: Exception.

Mr. SOUTHWORTH: We now ask leave to recall Secretary Worcester, for the purpose of identifying Exhibit B.

The COURT: You may do so.

DEAN C. WORCESTER, recalled in behalf of the Government, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Sr. SALAS: We object to the recalling of this witness, the Government should have finished with this gentleman when they had him on the stand before.

135 The COURT: Objection overruled.

Sr. SALAS: Exception.

Mr. SOUTHWORTH: I will show you an article, marked for identification Exhibit B., and which purports to be an editorial published in the newspaper El Renacimiento, and will ask you if you have ever read or seen that article before?

A. I have seen and read the article.

Q. I will ask you to state what it is?

A. It is an article in the number of the publication known as El Renacimiento of Tuesday, October 27th, 1908. It is the first article in the column headed "Habillas del Vulgo Son."

Mr. SOUTHWORTH: We now offer this Exhibit B, in evidence.

Sr. SALAS: We object to the admission of this exhibit on the same grounds as before stated, as immaterial and irrelevant and not sufficiently identified, and as a matter not dealing with this case now on trial.

The COURT: I think it is sufficiently identified, and the objection is overruled.

Sr. SALAS: Exception.

Mr. SOUTHWORTH: The Government rests.

Sr. SALAS: Before you close I would like to have an opportunity of cross-examining the Governor General still further.

The COURT: You will have to fix a time, because the Governor General is a very busy man.

136 *Defense.*

GREGORIO PASICOLAN, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?
A. Gregorio Pasicolan.
Q. Where do you live?
A. At No. 213 Calle Alix, Interior.
Q. What is your occupation?
A. Typesetter.
Q. Where do you work at the present time?
A. For El Renacimiento and Muling Pagsilang.
Q. What position do you hold there?
A. I am in charge.
Q. In charge of what?
A. Of the typesetters.
Q. Who is in charge of the printing of the articles published in the newspaper El Renacimiento??
A. The Director, he is the one who gives the material to the man in charge of the typesetters.
Q. Who receives the articles for the typesetters?
A. I do.
Q. From whom do you receive it?
A. From the Directors.
Q. How many directors are there in the newspaper El Renacimiento?
137 A. Two, one for the Spanish edition and one for the Tagalog edition.
Q. Are there only two editions?
A. Only two editions.
Q. Do you not receive some of the articles which are published from any other person outside of the directors?
A. No sir.
Q. Do the editors of the newspaper El Renacimiento and Muling Pagsilang give you articles for printing?
A. No sir.

Q. Do you know S. Martin Ocampo?
A. I know him as the administrator.
Q. Do you receive anything from him for printing in the newspaper?
A. Yes sir.
Q. What do you receive from him?
A. Commercial notices.
Q. Who corrects the proof of the articles you receive from the directors?
A. The directors.
Q. And after it is corrected by the editor to whom does it go?
A. It is delivered to me.
Q. For what purpose?
A. For revision, so that the forms can be made up.
138 Q. And when the paper is printed where does it go?
A. To the man in charge of the distribution of the paper.
Q. Does the proof of the articles which are set up go to Sr. Martin Ocampo?
A. No sir.
Q. Where is the office of the administrator situated in the building occupied by El Renacimiento?
A. On the first floor.
Q. And the editorial offices of El Renacimiento and Muling Pag-silang, where are they situated?
A. On the second floor.
Q. And where are the typesetters located?
A. On the first floor.
Q. From whom do you receive the communications which are to be published in the paper, for setting up?
A. From the directors.
Q. Who examines the proof of these communications?
A. The directors also.
Q. Does Sr. Ocampo intervene in any way in the matter of the articles and requests to have certain communications published in the paper?
A. No sir.
Q. Why not?
A. Because Sr. Ocampo leaves the office at about five o'clock in the afternoon.
Q. And at what time does the paper go to press?
A. From half past six to seven o'clock in the evening.
139 Q. You have stated that Sr. Ocampo is administrator of this newspaper; how do you know that?
A. I know that, because he is the one who pays me.
Q. Who signs the receipts for collections?
A. Sr. Martin Ocampo, the administrator.
Q. Do you know whether or not Sr. Ocampo intervened in the editing of articles which are published in El Renacimiento and Muling Pag-silang?
A. No sir, he does not.
Q. How do you know that?
A. Because he never intervenes.

Q. But should he intervene in such matters, would you know it?

A. No sir.

Q. Where were you working before you went to work for El Renacimiento?

A. With El Comercio.

Q. Only with that paper?

A. From that paper I went to El Renacimiento.

Q. And before you worked for El Comercio, where did you work?

A. With Chofré & Company.

Q. And before that where were you working?

A. With the Diario de Manila.

Q. And before working for the Diario de Manila, where were you working?

A. With the Auctioneer Española.

Q. What was that?

140 A. A Spanish newspaper.

Q. And what was the Diario de Manila?

A. A Spanish newspaper also.

Q. What position were you holding in these newspapers?

A. In the Auctioneer Española I was only a compositor.

Q. And in the Diario de Manila?

A. I was the second man in charge of the work.

Q. Now can you state to the Court if the editorial office and the business office of these newspapers were together?

A. No sir, they were not.

Mr. SOUTHWORTH: Objected to on the ground that it is incompetent, irrelevant and immaterial, and ask that the question and answer be stricken from the record.

The COURT: It may stand.

Q. Will you please state to the Court what you know and what you have seen in regard to the connection between the editorial part and the business part of these newspapers?

Mr. SOUTHWORTH: I object to that question.

The COURT: Objection overruled.

Mr. SOUTHWORTH: Exception.

A. The editorial part is entirely separate from the business part.

Q. Please state to the court in regard to that point what was the custom observed by you in the Auctioneer Es-

141 pañola, Diario de Manila, and El Comercio?

Mr. GEORGE: Objected to for the same reason.

The COURT: Objection overruled.

Mr. GEORGE: Exception.

A. I observed in all these papers, from the Auctioneer Española to Renacimiento, that the editorial department is altogether separate from the business department.

Sr. MORENO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. This defendant, Martin Ocampo, has an office in the same building with El Renacimiento, has he not?
A. In the same building.
Q. And who pays the printers for the work they do for El Renacimiento?
A. The administrator.
Q. Who is the administrator?
A. Don Martin Ocampo.
Q. Who pays the editors for the work they do on this newspaper El Renacimiento?
A. The administrator.
Q. The defendant, Martin Ocampo?
A. Yes sir, Sr. Martin Ocampo.
Q. Who has entire control of the financial part of the paper printing it and sending it out to the subscribers?
A. The administrator.
142 Q. Who has the collection of the money paid for the papers sold on the street and sold to the subscribers?
A. The collectors.
Q. To whom do the collectors report and turn over the money they collect?
A. To the administrator.
Q. The defendant, Martin Ocampo?
A. Yes sir.
Q. Is it not a fact that the defendant looks over the different issues of El Renacimiento, and sees what articles and editorials are published?
A. No sir.
Q. You state as a fact that he never looks over the paper to see what is published in it, either editorials or articles from reporters or anyone else?
A. He does not intervene at all in that.
Q. Is it not a fact that he instructs the editors and reporters as to what shall be and what shall not be published in that paper.
A. No sir.
Q. He never does that?
A. Never.
Mr. SOUTHWORTH: That is all.

HUGO SALAZAR, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?
A. Hugo Salazar.
143 **Q. Where do you live?**
A. Colegio de Esperanza No. 27.
Q. What is your occupation?
A. Director of the newspaper La Democracia.
Q. Do you know the customs established by both Spanish and

Filipino newspapers in regard — the separation or connection of the administrative part with the editorial part of the newspaper?

A. Yes sir.

Q. Please state to the Court what it is?

A. The general custom as established here in the Spanish and Filipino newspapers is that the administrator devotes himself exclusively to the economic part of the newspaper, and the director and editors are in charge of the editorial part.

Q. Does this separation of the newspaper into two parts give rise to any confusion?

A. I cannot tell as to that, but I have not observed any.

Q. And in accordance with that custom, does the administrator have anything to do with the publication of any of the editorials of the newspaper?

A. As I have stated before, as a general custom these two branches of the newspaper are separate.

Q. And under whose charge do the publication of the commercial notices and professional advertisements come?

A. They come under the control of the administrator.

Q. And that is the only part of the newspaper which comes under the control of the administrator?

A. Yes sir, that is the custom.

144 Q. And in regard to the employing and discharging of the staff of the newspaper, the editing part, who has charge of that?

A. The administrator.

Q. Do you know how the staff of the paper are selected?

A. The administrator who has the newspaper in his charge has control of the staff, but of course he must be guided by the director as to the position to which the different members of the staff shall be appointed.

Sr. MORENO: That is all.

Mr. SOUTHWORTH: No cross-examination

FRANCISCO A. BUSTILLO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO

Q. State your name?

A. Francisco A. Bustillo.

Q. Where do you live?

A. St No. 68 Calle San Luis.

Q. What is your occupation?

A. Director of the newspaper "Vida Filipina."

Q. Please state what you know as to the custom among the Spanish and Filipino newspapers in regard to their organization?

A. The general custom observed in the Spanish and Filipino press of Manila is, that there is a complete and thorough separation between the economic administration of the paper and the editorial part of the newspaper.

145 Q. And is that separation absolutely complete?
A. Yes sir.
Q. Does the administrator have any intervention in articles published in the newspaper?
A. The administrator, as a general rule, has no intervention whatsoever in the matter of editing.
Q. And does the administrator intervene in relation to the editorial staff in any way?
A. Absolutely no.
Q. Who has charge of the commercial and professional advertisements and notices?
A. That is in charge of the administrator.
Q. Is that the only thing in regard to what is published in the newspaper which comes under the control of the administration?
A. That is the only thing.

Sr. MORENO: That is all.
Mr. SOUTHWORTH: No cross-examination.

H. H. MARCUS, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?
A. H. H. Marcus.
Q. Where do you live?
A. At. No. 164 Calle Nueva, Ermita.
146 Q. Where do you work at the present time?
A. In the English edition of El Renacimiento.
Q. Is it the same newspaper as El Renacimiento or a different paper altogether?
A. A different paper altogether for administrative purposes.
Q. And the editorial part?
A. That is also altogether different from the other paper, the directors are different.
Q. The newspaper "The Renacimiento" is edited in the same building as El Renacimiento?
A. Yes sir, it is.
Q. Where is the office of the administration?
A. The business office is on the lower floor, immediately upon entering the building.
Q. Who is the administrator of that paper?
A. Sr. Martin Ocampo.
Q. Administrator of the paper?
A. He is the business manager of "The Renacimiento," so far as I know.
Q. And of El Renacimiento?
A. I believe he is also business manager or administrator of that paper.
Q. And of "Muling Pagsilang"?
A. I believe he is also business manager or administrator of that, because his name is attached to that paper.

147 Q. As administrator of these three newspapers, does Sr. Ocampo intervene in any way in the editing of articles published in them?

A. To my best knowledge and belief he does not, but I am only judging from my experience since I have been on the English edition.

Q. Do you know positively whether or not he has any intervention whatsoever in the articles published in either of these three papers?

A. I know that he has not.

Q. Do you know whether or not Sr. Ocampo examines the newspaper before it is distributed?

A. He does not.

Q. Does he examine the proofs before taken to the printers for revision?

A. No sir.

Q. In what part of the publication of the paper does Sr. Ocampo intervene?

A. So far as I can see only the advertisements, and the business part pure and simple.

Q. And outside of that he does not intervene in anything else?

A. Not to my knowledge.

Sr. MORENO: That is all.

148 Cross-examination by Mr. SOUTHWORTH:

Q. Sr. Ocampo pays the editors, does he not?

A. Yes, but that is a business function.

Q. Well the editors write the editorials for the paper, do they not?

A. Yes sir, they do.

Q. And Sr. Ocampo employs the editors, does he not?

A. What do you mean by the term "employs"?

Q. Well he engages them?

A. Yes sir.

Q. Now Sr. Ocampo also has charge of the circulation of the paper, has he not?

A. Well if you mean looking after the post, looking after the delivery or mail part, yes, sir.

Q. And he looks after the muchachos who deliver the paper, attends to the mailing of the paper, the sending of it out?

A. Yes, he looks after these things.

Q. You state positively that Sr. Ocampo, the defendant here, does not look over the editorials in El Renacimiento, or over the copy sent in by the reporters, do you?

A. To my own best knowledge I have not seen him looking over anything before it was published.

Q. Then so far as your knowledge goes he sends out this paper without ever having looked at it to see what was either in the

149 editorials or the articles put in by the reporters?

A. He may possibly have read the editorials after they were printed, or may have read the paper after it was printed, but I am positive he had nothing to do with it before that.

Q. So far as you know he has read the editorials in the paper before it is sent out for distribution?

A. I think he may be interested enough to read, but I could not say whether he has read them, or not.

Q. In fact you have no knowledge on the subject, is that not so?

A. I think he has at times casually glanced over the paper, as you might do before buying your paper.

Mr. SOUTHWORTH: That is all.

MAXIMO SEVILLA, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?

A. Maximo Sevilla.

Q. Where do you live?

A. At the Convento de Tondo.

Q. What is your occupation?

A. At the present time administrator of the newspaper "Vida Filipina."

150 Q. Do you know the general custom established in this country in regard to the relation between the administrative and editorial departments of newspapers?

A. Yes sir.

Q. State to the Court what it is?

A. I know that the administration has in charge all the advertisements published, and the payment of employees, and that is all.

Q. Does the administrator become familiar with the articles published in the paper before the proofs are sent to the printers for revision?

A. No sir.

Q. Do you know who examines and edits these articles before they are published?

A. Yes sir.

Q. Who corrects the proof?

A. The director.

Q. What intervention has the administrator in regard to any part of what is published in the paper?

A. The administrator only intervenes in regard to the advertisements that are published.

Q. Does the administrator examine the newspaper before it is printed and goes out on the street?

A. The administrator does not examine the paper before it goes out.

Sr. SALAS: That is all.

Mr. SOUTHWORTH: No cross examination.

151 LOPE K. SANTOS, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?
A. Lope K. Santos.
Q. Where do you live?
A. At San Felipe Neri, Rizal.
Q. What is your occupation?
A. Newspaper man.
Q. Have you anything to do with the newspaper "Muling Pagsilang?"
A. Yes sir, I am director of that paper.
Q. Who has charge of the publication of the articles and editorials published in "Muling Pagsilang?"
A. I have.
Q. Who is the administrator of that paper?
A. Don Martin Ocampo.
Q. Has Sr. Ocampo any intervention in the editorials published in that paper?
A. Absolutely none.
Q. To whom are the articles which are going to be published delivered, before going to the printers?
A. To the man in charge of the printers, Sr. Gregorio Pascuala.
Q. Who corrects the proof?
A. I do.
152 Q. And after the proofs are corrected to whom do they go?
A. They go again directly to the printers, through the man in charge.
Q. Does Sr. Ocampo intervene in any matters concerning these proofs, or not?
A. He does not intervene in such matters in any way, he has absolutely nothing to do with it.
Q. Do you or the editors inform Sr. Ocampo of the articles before they are published?
A. No sir.
Q. After the newspaper is printed and before it is circulated, does Sr. Ocampo examine the newspaper?
A. No, as a rule the printing of the paper is finished at midnight, and then they go first to the man in charge of the distributors, and at that time there are no employees of El Renacimiento at the building except the distributors.
Q. At what time is the first printing of the paper?
A. There is no fixed time. Sometimes it is eight o'clock, in which case the paper that is sold in the streets comes from the head of the distributors, who sells to the boys directly as it comes from the machine; and sometimes the first printing of the paper is at ten o'clock at night.
Q. The communications that come in for "Muling Pagsilang," who trans them over to the man in charge of the newspaper?

A. There are two kinds of communications in the newspaper, some of which are paid for and others not. The communications which are not paid for are generally such as refer to ers of public interest, and in such cases I am the only one to le whether they should be published or not. In regard to communications which are paid for, they pass through the ls of the administrator, who decides as to what price should harged for their publication.

From whom do you receive these communications which are for?

Many times I receive them from the interested parties, and etimes from the administrator, who sends me such things for mination, to decide whether they are fit for publication, or not.

Do you know if at any time such communications were pubd in "Muling Pagsilang" without your inspection?

There has never been published any "communicado or redo" without my examining it first.

And after you had rejected any of these communications, d the administrator order its publication?

No sir, that could not be.

Why not?

Because I am the only one who is responsible for all which appears in the newspaper, and even if the interested party should pay the administrator the charge which he fixed for the publication of the communication, I would not consider that would relieve me from my responsibility for the matter ished in the paper.

Have you contracted any obligation with Sr. Ocampo as to responsibility in regard to articles published in the newsr?

r. GEORGE: Objected to as incompetent, irrelevant and immal.

he COURT: Objection overruled.

r. GEORGE: Exception.

Yes sir, I have.

In which way did you contract that obligation?

r. GEORGE: Objected to for the same reason.

he COURT: Objection overruled.

r. GEORGE: Exception.

I remember that at the beginning Sr. Ocampo had spoken e verbally in regard to this particular matter, and later on I ved a letter from him in which he specified the obligations I d have as director of the paper, and I agreed to this and signed onformity to the letter.

I will hand you a letter, marked for identification Exhibit and will ask you to state what it is?

This is the letter which I have referred to, and to which I d my conformity.

Can you tell us whose signature appears at the end of this ment?

A. That is my signature.

Q. And the signature which appears before that, whose is it?

A. That is the signature of Don Martin Ocampo, administrator of the newspaper "Muling Pagsilang."

Sr. MORENO. We offer this letter in evidence as Exhibit 14-I which has just been identified by the witness.

Mr. GEORGE. We object to this letter for the same reason.

The COURT. Objection overruled, it may be received.

Mr. GEORGE. Exception.

Q. Who proposes the admission of anyone to the editing staff of "Muling Pagsilang"?

A. I do.

Q. Who appoints them?

A. I do also.

Q. What intervention has Sr. Ocampo in regard to that staff?

A. He intervenes only in regard to their salary. When I select an editor for "Muling Pagsilang," the administrator can only intervene by calling my attention to the fact as to whether or not the salary named by me for the particular individual is commensurate with the qualification of the man, or not.

Q. Who decides upon the policy which the paper should follow in which you are director?

A. I do.

Q. Has Sr. Ocampo anything to do with that?

A. Absolutely nothing.

Q. Can the administrator, Sr. Ocampo, impose his particular ideas in regard to the policy which the paper should pursue?

A. The administrator cannot intervene in any way whatsoever in that particular.

Q. As director of the newspaper "Muling Pagsilang," is your authority subordinate to that of Sr. Martin Ocampo?

A. No sir. Sr. Ocampo is an employee just like myself.

Q. What relations has Sr. Ocampo with the directors of the newspapers El Renacimiento and Muling Pagsilang?

A. His only relation is the payment of our salaries at the end of every month.

Q. In what part of the building is the business office of El Renacimiento and Muling Pagsilang situated?

A. The office of the administration is downstairs on the first floor.

Q. And where are the editorial rooms of El Renacimiento and Muling Pagsilang?

A. On the second floor.

Q. Does Sr. Ocampo have anything to do with the editorial rooms of these papers?

A. No sir.

Sr. MORENO. That is all.

The hearing was then suspended until two o'clock in the afternoon.

157 Afternoon Session.

Pursuant to adjournment the case was called with the same appearances as in the morning session.

LOPE K. SANTOS, still on the stand, testified as follows:

Cross-examination by Mr. GEORGE:

Q. I believe you have stated that you are the editor of the Tagalog edition of El Renacimiento?

A. I am the director, not the editor.

Q. What are your duties as director?

A. My duties as director may be set forth as follows: the direction of the policy that "Muling Pagsilang" should follow, that is of the editorial edition which is published daily, an examination of all the editorials which are written by my editorial staff, and the selecting of the material for carrying on the work of the paper, and other things of a like nature.

Q. You are hired and paid by the accused here, as administrator of that paper?

A. Hired no, I am the director of the paper and receive my salary from him as director.

Q. Who employs you; how do you happen to be there?

A. I have been director of Muling Pagsilang from the date when I personally called and saw Mr. Martin Ocampo as administrator. The staff of the Spanish edition of El Renacimiento proposed the issuing of a Tagalog edition of said newspaper in order to carry out the great idea on which El Renacimiento was founded, and with the same policy, which was more a proposition of mine than theirs. This is how the paper was started and I became administrator.

158

Q. And did the administrator agree to that?

A. The administrator agreed and arranged as to the financial part of the paper.

Q. And who pays you monthly?

A. And from that time I have been performing the duties of director, but not for the purpose of gain.

Q. Nevertheless you receive pay, do you not?

A. As a kind of gift.

Q. How much is the amount you receive each month?

A. Something like fifty pesos, or maybe a little more, a month.

Q. From whom do you receive that pay?

A. Then when that newspaper Muling Pagsilang was published——

Q. Please answer the question: from whom do you receive that pay?

A. From Sr. Manuel Palma.

Q. And now from whom do you receive it?

A. From Sr. Martin Ocampo as administrator of Muling Pagsilang.

Q. How long have you been receiving it from Sr. Ocampo?

A. About two years or more, it may be three years.

159 Q. You received it up to and including October of this year, did you not?

A. Yes sir.

Q. Now what you term the Tagalog edition of El Renacimiento and the Spanish edition, are all printed on one sheet, attached together are they not?

A. It forms only one piece, the Spanish and Tagalog editions, but they do not contain the same printed matter.

Q. But the two editions are printed together on one sheet of paper?

A. Yes sir.

Q. And the subscribers pay for both of the editions?

A. Yes sir.

Q. And you do not send out the Tagalog edition as a separate publication, a separate sheet, separated entirely from the Spanish?

Sr. MORENO: I object to the continuation of these questions as immaterial as far as Sr. Ocampo is concerned, and secondly as not proper cross examination.

The COURT: I do not see the materiality as far as this defendant is concerned.

Q. Now this contract which has been introduced in evidence as Exhibit D. 1., do you know whether or not Sr. Ocampo had a like contract with any other directors of the paper?

A. I believe so.

160 Q. With whom?

A. With Sr. Teodoro M. Kalaw, director of the Spanish edition.

Q. Do I understand you to say that this contract was formulated after there had been a prosecution instituted against the accused, Sr. Martin Ocampo?

A. Yes sir.

Q. And the object of this was to relieve Sr. Ocampo of either civil or criminal liability, and to make you and Sr. Kalaw responsible?

Sr. MORENO: *O* object to the question, the document itself is the best evidence as to the intention of the parties.

The COURT: Objection overruled.

Sr. MORENO: Exception.

A. The idea of saving Sr. Ocampo from any civil or criminal responsibility was not taken into consideration: what I took into consideration especially myself upon accepting that contract was to respect the truth, that is that Sr. Ocampo had nothing to do with the directory or editorial work of Muling Pagsilang, and with that contract the duties of administrator became separated from that of director.

Q. And after the making of this contract Sr. Ocampo paid no more attention to what was published in the paper, but just sent out what you saw fit to publish?

A. Sr. Ocampo never paid any attention to that, and I remember

very well that in that case you refer to that was prosecuted against us——

161 Q. Answer my question, which was that after that contract Sr. Ocampo paid no attention to what was published in the paper, and just sent the paper out with whatever you choose to publish?

Sr. MORENO: I ask the Court to allow the witness to answer in his own way; the prosecuting attorney is trying to make out that prior to the making of this contract Sr. Ocampo had something to do with the publishing of this paper.

The COURT: He can answer the questions put, but he is under no obligation to testify outside of that.

A. Of course after that contract Sr. Ocampo never paid any attention to what was published, the same as before, there was no change in his course.

Q. He circulated the paper without paying attention as to what was published in it, he left that all to you?

A. Who do you mean?

Q. I mean Sr. Martin Ocampo.

A. He was not the one who circulated the paper.

Q. Did he not employ men to circulate it?

A. He paid all the employees, not those only who circulated the paper.

Q. He employed the men to circulate it, did he not?

A. I do not know anything about that.

Q. You have testified that that was a part of his business, to attend to the subscription and circulation and the business management of the paper?

162 A. Yes sir.

Mr. GEORGE: That is all.

LEONCIO GONZALES LIQUETE, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?

A. Leoncio Gonzales Liquete.

Q. Where do you live?

A. Azcarraga No. 106.

Q. What is your occupation?

A. Newspaper man.

Q. Where are you employed at the present time?

A. In El Renacimiento.

Q. In which edition of El Renacimiento?

A. In the Spanish edition.

Q. Do you know Sr. Martin Ocampo?

A. Yes sir.

Q. How did you come to know him?

A. On account of his being the administrator of the newspaper in which I am working.

Q. Can you tell us what authority Sr. Ocampo has as administrator?

A. He is in charge of all the administrative work of the newspaper.

163 Q. And in regard to what is published in El Renacimiento what intervention has Sr. Ocampo in that?

A. Sr. Ocampo has nothing to do in regard to the editorial part or directory part; what he has in charge are the commercial notices or advertisements which are paid for.

Q. Who is in charge of the editors and the directory part of the newspaper?

A. The director, Sr. Teodoro M. Kalaw.

Q. From whom do the editorials and the articles which are published in the paper come from just before going to the printers?

A. Almost always written by the editor in chief, but sometimes the editors write them also.

Q. After an article is written by an editor, to whom does it go?

A. To the director for examination and correction, and it is edited as he sees fit.

Q. After the article is corrected, where does it go?

A. It is turned over to a printer's boy to bring to the man in charge of the printers.

Q. And when a proof of that article is made, who corrects that?

A. As a general rule the editor who wrote the article corrects the proof, but before it is sent back to the printers to revise the director examines it.

Q. And the communications that come to the paper, both those which are paid for and those which are not, who examines those?

164 A. The director generally examines them, even those which are paid for and though he has nothing to do with the communication, yet he examines them to see if they are grammatically written, and if he finds that they contain matter of no public interest he rejects them, and even if the administrator desires to publish them, the decision remains with the director as to whether they shall be published or not.

Q. What has the administrator got to do with the making up of the editorials or articles which are to be printed?

A. He has nothing to do with the editorial part.

Q. Where is the office of the administration?

A. In the lower part of the building.

Q. And the editorial rooms?

A. On the upper floor.

Q. Has Sr. Ocampo anything to do with the editorial department?

A. Nothing whatsoever.

Q. Do you know who selects the editorial staff?

A. As a general rule the staff of a paper are men who have gained the confidence of the director.

Q. Do you know whether or not before the paper is distributed it passes under the inspection of the administrator?

A. It may be that he examines them sometimes to see in regard to the advertisements which are published and in which he may have an interest, but that is all.

165 Q. Before you were employed in El Renacimiento, where were you working?

A. In La Democracia.

Q. At what?

A. I was director, after being an editor for some time.

Q. Can you tell us the general custom of the way in which Spanish and Filipino papers are established?

A. Yes sir.

Q. Please state to the Court what it is?

A. For instance, in regard to the editorial part the members of the editorial staff are selected either by the director or the entity of the newspaper, whatever it may be.

Q. And in regard to the relation which existed between the administrative and the editorial departments of the newspaper, can you tell us what the custom is?

A. In La Democracia just the same as El Renacimiento, I can state that these two departments are entirely separate; that the administrative part has nothing whatever to do with the editorial part. The administrator cannot intervene or have anything to do and he is in no condition to know what is going on in the paper as far as the editorial part is concerned. These two departments are entirely different, the administrator can have nothing to do with any editorial publication, or anything of that kind.

Q. Who employed you as an editor or writer for El Renacimiento?

166 A. The then director of the newspaper, Fernando M. Guerrero, I was introduced to him by the administrator, who recommended that I be appointed.

Q. In your position, on whom do you depend directly?

A. On the director, to whom I am indebted for the employment I have.

Q. Do the editors depend on the administrator for anything?

A. The administrator keeps track of the time a man works.

Q. What are the relations between the director and the administrator?

A. Only in regard to the economic part, he keeps track of the time that all employees work, and the amount of their salaries depends upon the work they do.

Q. How long have you been working for the newspaper El Renacimiento?

A. Probably a year and a half.

Q. And during this time that you have been working there, did Sr. Ocampo have anything to do with the editorial work or with the articles published in the paper?

A. No sir, he had nothing to do with it.

Q. Never?

A. Never.

Q. At what time does El Renacimiento go out for circulation?

A. From half past five to eight o'clock, it all depends whether they have to wait for important news, in which case sometimes as late as eight o'clock. As a general thing the printing of the paper commences at five o'clock, and the newspaper goes out for cir-
167 culation half an hour or an hour later.

Q. At what time does Sr. Ocampo leave the office?

A. As a general rule at five o'clock.

Q. Do you know whether or not before leaving the office Sr. Ocampo makes himself familiar with what is published in the paper?

A. I never saw him making himself familiar with the contents of the paper.

Q. At what time do you leave the office?

A. After five o'clock, half past five or so.

Q. And when you go away you do not see Sr. Ocampo in his office?

A. As a general rule when I leave I do not see Sr. Ocampo in his office, as he leaves before I do.

Sr. MORENO: That is all.

Mr. GEORGE: No cross examination.

PEDRO AUNARIO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?

A. Pedro Aunario.

Q. Where do you live?

A. At the present time at the Renacimiento building.

168 Q. What is your occupation?

A. Newspaper man.

Q. Do you know Sr. Martin Ocampo?

A. Yes sir.

Q. What relation have you got with the newspaper "The Renacimiento"?

A. The relation of being an employee of that paper.

Q. In what capacity are you employed there?

A. At present I am in charge of the English edition of the paper.

Q. Since when are you in charge of "The Renacimiento"?

A. From the 1st of October of the present year.

Q. When you took charge of "The Renacimiento", did you receive any letter from Mr. Ocampo in reference to that employment?

A. Yes sir.

Q. Do you remember if you replied to that letter?

A. Yes sir.

Q. I will hand you a letter, marked for identification Exhibit D. 2., and will ask you to state what it is?

A. This is a letter signed by me.

Q. Is that your signature which appears at the end of that letter?

A. Yes sir, I signed it personally.

Q. And whose signature appears before that?

A. That is the signature of Sr. Martin Ocampo.

169 Sr. MORENO: I offer in evidence this letter which has just been identified by the witness, as Exhibit D, 2.

The COURT: There being no objection it may be received.

Q. What position does Sr. Ocampo occupy in regard to "The Renacimiento"?

A. The position of administrator, he looks after the material interests, the financial or economic part of the paper.

Q. Has Sr. Ocampo anything to do with the editorial department of "The Renacimiento"?

A. Sr. Ocampo has nothing to do with that department of the paper.

Q. Who has charge and ultimately decides what articles and editorials shall be published in that paper?

A. That is under the control of the director.

Q. Do those articles and editorials come under the supervision of Sr. Ocampo before being sent to the printers?

A. As far as my personal experience goes, up to the present time Sr. Ocampo has never interfered in any way with such matters.

Q. Where were you employed before you became director of "The Renacimiento"?

A. I was working for the Spanish edition of El Renacimiento.

Q. As what?

A. As editor and translator.

170 Q. Is the newspaper "The Renacimiento" in the same building as the newspaper El Renacimiento?

A. Yes sir.

Q. Do you know if Sr. Ocampo as administrator has anything to do with the editing of the articles published in "The Renacimiento"?

A. As I have stated before, according to my personal experience up to the present time, he has had nothing to do with the editorials or articles published in the paper.

Q. Do you know whether or not Sr. Ocampo has either time or opportunity to examine, or intervene in any way, or scrutinize the articles published in that paper?

A. In my opinion the duties of Sr. Ocampo as administrator takes up all his time.

Q. And how do you come to form that opinion?

A. From my personal observation of what is going on in the office.

Q. Do you know of your own knowledge and experience, and on account of the position you are holding at the present time, who has under his control the selecting and employment of the editorial staff of the paper?

A. The director is the only one who has in charge the selection of the members of the editorial staff, and they must be men who have gained his confidence.

Q. And on whom do the editorial staff depend directly?

A. The members of the editorial staff are directly responsible to the director of the newspaper.

171 Q. Who examines the work done by the editorial staff?
A. The director.

Q. What relation have the members of the editorial staff to the administrator?

A. As far as my personal experience goes, and according to my personal observation also, I believe the only relation is that they go to him to get their salary, and that is all.

Q. Could the administrator appoint any member of the editorial staff without the knowledge and approval of the director?

A. No sir.

Q. In what part of the newspaper is the administrator most directly concerned?

A. With the advertisements, subscriptions, and communications which are paid for.

Q. Does the administrator send these communications which are paid for directly to the printers?

A. All communications when received are sent to the director, who examines them and decides whether they should be published or not.

Q. And if the person interested should go to the administrator and pay for the insertion of the communication, could the administrator have it published without the authorization of the director?

A. No sir, the administrator is the one who examines all communications to see whether they are fit for publication, or not.

172 Q. Do you know whether or not at any time Sr. Ocampo examined or criticised articles, editorials or communications of any description received by the newspaper?

A. I know of no such case.

Q. Who has charge of the technical part of the newspaper El Renacimiento?

A. The director is responsible for that.

Q. And who is the director at the present time, who is responsible for the Spanish edition of El Renacimiento?

A. Teodoro M. Kalaw.

Q. Do you know whether or not the director of that newspaper consults with or informs Sr. Ocampo before he sends articles to the printers?

A. I know of no such case, absolutely none.

Sr. MORENO: That is all.

Mr. GEORGE: No cross-examination.

FAUSTINO AGUILAR, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?
A. Faustino Aguilar.
Q. Where do you live?
A. At No. 128 Calle Carolina, Ermita.
Q. Do you know Sr. Martin Ocampo?
A. Yes sir.

Q. How do you happen to know him?

173 A. He is the administrator of the newspaper in which I——

Q. What is the name of that newspaper?

A. "Muling Pagsilang".

Q. Have you got any relation with the newspaper "Muling Pagsilang"?

A. Yes sir, I am editor in chief.

Q. As editor in chief of that paper, on whom do you depend directly?

A. On the director of that edition, Sr. Lope K. Santos.

Q. In the organization of that paper what relation exists between the editorial staff and Sr. Ocampo?

A. No relation whatsoever, with the exception of the economic part.

Q. Who edits and authorizes the publication of articles in "Muling Pagsilang"?

A. The director, Sr. Lope K. Santos.

Q. When an article is edited and authorized for publication, to whom does it go?

A. To the foreman printer.

Q. And after the article is set up in type, who has charge of correcting the proofs?

A. Sometimes the director, and sometimes the particular editor who may be on duty at the time.

Q. Does Sr. Ocampo have anything to do with the publication of any article before it reaches the printers?

A. No sir, he has nothing whatever to do with it.

Q. How long have you been working on that paper?

A. About five years.

Q. And during all that time is that the way you have observed such matters treated?

174 A. Yes sir, during all that time such matters have been conducted in that way.

Q. And after the paper has gone to press and before it is distributed, does Sr. Ocampo have an opportunity of examining the paper?

A. No sir, because as a general rule the printing of the paper is not finished until half past six or seven o'clock, and before that time Sr. Ocampo has left the office.

Q. What part of the paper comes under the immediate control and vigilance of Sr. Ocampo?

A. The commercial part, such things as advertisements, etc.

Q. And who authorizes the publication of communications which may come in, whether paid for or not?

A. The director.

Q. Has Sr. Ocampo anything to do with the publication of that kind of matter?

A. Nothing whatever, except to collect the amount charged for such communications as are paid for, and even then only after it has been examined and authorized by the director for publication.

Q. Can Sr. Ocampo of his own free will authorize the publication of any communication, whether paid for or not, without consulting with the director first?

A. No sir, in no way whatsoever.

Q. And during the five years you have been with the newspaper "Muling Pagsilang", did Sr. Ocampo at any time do that?

A. No sir.

175 Q. Now if a person wanted to publish anything in the editorial columns of the paper, and contracts with Sr. Ocampo for its publication, can Sr. Ocampo have it published without the authorization of the director?

A. In no way could Sr. Ocampo intervene in such matters, because no communication could be published without the consent and authorization of the director, and he is the only one to decide in such cases.

Q. Has Sr. Ocampo, in his capacity as administrator, the obligation of reading and knowing what is contained in any of the articles published in the paper?

A. No sir, he is under no such obligation.

Q. Who appointed you as editor in chief of "Muling Pagsilang"?

A. I was requested by Sr. Lope K. Santos to write for that newspaper, when I was on the staff of a paper called "La Patria."

Q. Who has the selecting and appointing of the staff of "Muling Pagsilang"?

A. They are always selected and appointed by the director.

Q. Can the administrator appoint any of the staff without the consent and knowledge of the director?

A. No sir.

Q. Why not?

A. Taking into consideration the fact that the composition of the paper is under the control of the director, of course the appointment of any member of the staff comes under his control and not that of the administrator. The administrator has nothing to do with such matters, and the persons employed must suit the director and have his confidence.

176 Q. How many administrations come under the control of Sr. Martin Ocampo?

A. At the present time I know that he is the administrator of "El Renacimiento," "Muling Pagsilang," and "The Renacimiento."

Q. According to your personal observations, could Sr. Ocampo become familiar with the editorials of these three newspapers?

A. No sir, he could not.

Q. Why not?

A. In the first place the office of the business management of these papers is on the first floor of the building, that is the office of Sr. Ocampo. Furthermore, as I have already stated here, everything that is done in the editorial department of the paper is entirely independent of the work of Sr. Ocampo as administrator. So even if Sr. Ocampo desired to intervene in the work of editing the paper he could not do so, for the reason that there is a complete separation between the two departments.

Q. Would he have time to intervene, if he so desired?
A. And also he would not have time to intervene.
Q. Why do you believe so?
A. Because he has plenty of work of his own to attend to without intervening with the editorial department. I always see him working hard.

Sr. SALAS: That is all.

177 Cross-examination by Mr. SOUTHWORTH:

Q. Who is the director of the Spanish edition of El Renacimiento?
A. Sr. Teodoro M. Kalaw.
Q. Who is the director of the Tagalog edition of El Renacimiento?
A. Sr. Lope K. Santos.
Q. How are the-e directors selected, and how are they paid?
A. At the time when I joined the paper Sr. Santos was already employed there, and when Sr. Guerrero was appointed assemblyman for the district south of Manila I know that he was succeeded by Sr. Kalaw, who was at that time an employee of the paper.
Q. Do you know who employed Sr. Santos as director of that paper?
A. No sir, because when I joined the paper he was already employed there.
Q. Do you know by whom Sr. Kalaw was employed as director of that paper?
A. As I have already stated, when Sr. Guerrero was appointed assemblyman for the district south of Manila I know that Sr. Kalaw succeeded Sr. Guerrero.
Q. But who employed him?
A. I do not know that.
Q. Do you know what salary he gets?
A. Yes sir.
Q. Do you know who pays his salary?
A. No sir, I do not know anything about that.
178 Q. You do not know whether that contract was made between him and the defendant or not, do you?
A. I do not know anything about that.
Q. Who controls the directors of the Spanish and Tagalog edition of that paper?
A. Nobody has any control of the directors.
Q. Was there any agreement between the administrator and these directors as to who shall control?
A. I do not understand the question.
Q. Was there any contract between the administrator, the defendant here, and the directors of the Spanish and Tagalog editions of El Renacimiento, as to who shall control?
A. The only thing I know is in regard to the director of the Tagalog edition, Sr. Santos, who received a letter from Sr. Ocampo in which he was notified that he, Sr. Santos, was in charge of the publishing of "Muling Pagsilang," and that he was to assume all responsibility as director of the paper. In regard to the Spanish

edition I cannot testify anything in regard to whether there is a similar contract, or not, because the two papers are entirely independent one from the other, and I did not have the opportunity of finding out if there was such an agreement as to the Spanish edition or not.

Q. You have stated that you believed that Sr. Ocampo controlled the economic part of that paper: what do you mean by the economic part of that paper?

179 A. He is in charge of the commercial part, the advertisements, and the paying of the salaries of the employees, that is what I mean.

Q. You mean that he receives the advertisements and receives the pay for them and that he received the subscriptions for the paper and receives the pay for them?

A. I believe so.

Q. And you understand by that that he pays the printers and pays the editors and pays the directors of that paper do you not?

A. Of course he is the man in charge of the money, he is the one who pays the salaries of the employees.

Q. And he furnishes all of the money by which the expenses of running that paper are paid, does he not?

A. I do not know about that, I only know that I personally get my salary from him.

Q. Do you know of anybody else connected with that paper who pays any of these expenses?

A. No sir, I do not.

Mr. SOUTHWORTH: That is all.

Redirect examination by Sr. SALAS:

Q. You have stated that Sr. Santos received a letter from Sr. Ocampo, is that not so?

A. Yes sir.

Q. And do you mean to say that it was on account of that letter that Sr. Santos became director of that paper?

A. No sir, when I was employed there first Sr. Santos was already director of that paper. I have been working for that news-

180 paper some five years now, and I do not know how long prior to that time Sr. Santos was director.

Q. So what you mean and what you want us to understand is, that Sr. Santos was director of that paper long previous to the time that letter was received?

A. That is what I mean to say.

Sr. SALAS: That is all.

FIDEL A. REYES, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name.

A. Fidel A. Reyes.

Q. Where do you live?

A. At Quiapo.
Q. What is your occupation?
A. Journalist.
Q. Do you know Sr. Ocampo?
A. Yes sir.
Q. How do you happen to know him?
A. I know him as the administrator of El Renacimiento.
Q. What relation have you got with El Renacimiento?
A. I am one of the editors of El Renacimiento.
Q. How long have you been employed by El Renacimiento?
A. About one year, more or less.
Q. In the organization of that paper what has Sr. Ocampo got to do with the editorial department?

181 A. I know of no relation whatsoever that Sr. Ocampo has in regard to what is published in El Renacimiento.

Q. Who has under his inspection and authorizes the publication of articles in that newspaper?
A. The director of El Renacimiento exclusively.
Q. Who orders these articles sent to the printers?
A. The director.
Q. Who corrects the first proofs of these articles?
A. The director of El Renacimiento.
Q. And after these corrections who orders the printing of the complete paper?
A. The foreman in charge of the printers consults with the director, and if the director says it is all right then it is printed, and the same thing exactly is the case with "Muling Pagsilang."
Q. After the paper is printed who has charge of delivering them to the distributors?
A. I did not pay any attention as to that.
Q. In all that kind of work until the paper goes out to the public, what intervention has Sr. Ocampo?
A. With the exception of the commercial advertisements he has nothing whatsoever to do with it.
Q. As a general rule what time is the paper printed every day?
A. From half past five to eight o'clock at night.
Q. Do you know whether or not Sr. Ocampo examines the paper before it is printed and before it is delivered to the distributors?
A. I have never seen him examining it, and I do not think he does.

182 Q. At what time does Sr. Ocampo leave the office?
A. I generally find him in the office about ten o'clock in the morning, and in the afternoon when I go to the office I do not see him, and when I leave I do not see him either.
Q. Who appointed you to the position you are holding in El Renacimiento?
A. The director of El Renacimiento invited me to become an employee of that paper.
Q. Did Sr. Ocampo have anything to do with your appointment as one of the editors of that paper?
A. I believe not.

Q. Did you have a direct understanding with Sr. Ocampo?
A. No, sir, I did not.
Q. Do you know whether or not any member of the staff of El Renacimiento has been appointed by Sr. Ocampo?
A. I know of none.
Q. What part of that newspaper comes under the immediate control of Sr. Ocampo?
A. The commercial advertisements.
Q. And outside of the commercial advertisements is there any other part of that newspaper which comes under his control?
A. No sir.
Q. Who authorizes the publication of communications received by the paper, both those which are paid for and those which are not?
A. The director of El Renacimiento.
Q. What intervention has Sr. Campo in regard to that part of the paper?
183 A. He has no intervention, the director is the only one who can authorize the publication of such communications, even if they are paid for.
Q. Could the administrator order the publication of any such communications, whether paid for or not, without the consent of the director?
A. I have never heard of any such communications being sent to the administrator and ordered by him to be published, and from my position in El Renacimiento and the experience I have had there I do not believe the administrator could do that.
Q. Why not?
A. Because that is a matter which is regulated entirely by the director.
Q. Have you at any time been director of any newspaper?
A. Acting director, yes sir.
Q. Of what newspaper?
A. Of El Renacimiento.
Q. Who designates the policy which that paper shall pursue?
A. The director of the paper.
Q. Has Sr. Ocampo anything to do with that?
A. Absolutely nothing.
Sr. SALAS: Absolutely nothing?
A. Absolutely nothing.

Cross-examination by Mr. SOUTHWORTH:

Q. What position do you hold in El Renacimiento?
A. I write for that paper.
184 Q. But what position do you hold there?
A. After the director I come second.
Q. Then you are the second director of the paper?
A. No.
Q. Well what is the name of the position you hold with the paper?
A. In Spanish we call it editor in chief (redacteur en Jefe).

Q. Who is the director of the Spanish edition of that paper?
A. At the present time?
Q. Yes.
A. Sr. Teodoro M. Kalaw.
Q. How long has he been director?
A. I understood that he succeeded Sr. Guerrero.
Q. How was he appointed director?
A. Most probably he was acting director first.
Q. Do you know anything about how he was appointed?
A. Sr. Kalaw was editor in chief at the time Sr. Guerrero was director of that paper and most probably when Sr. Guerrero left he appointed Sr. Kalaw.
Q. You have stated that at one time you were acting director of the Spanish edition of El Renacimiento?
A. Yes sir.
Q. Who appointed you as acting director?
A. There was no formal appointment, but it so happened.
Q. How did it happen so; why did you take up the duties of acting director?
A. Before Sr. Kalaw left one time he asked me if I would attend to his work during his absence, and I said I would, and so when he left I assumed his duties.
185 Q. Does the director of the paper have the right to name the acting director when he leaves temporarily?
A. That is my understanding.
Q. And who appoints the director?
A. I do not know as to that point?
Q. You do not know how the directors are appointed, or anything about that?
A. I know how I was appointed.
Q. Does the director give instructions to the administrator of the paper?
A. Sometimes.
Q. But the administrator has no right to give instructions to the director?
A. No sir, he has not.
Q. When were you acting director of this paper?
A. I believe on or about the month of June or July of the present year.
Q. I will show you an article marked Exhibit A., purporting to be an editorial in El Renacimiento of the issue of October 30th, 1908, and will ask you to state if you ever saw that article before?

Sr. SALAS: I object to this question as not proper cross-examination.

The COURT: Objection sustained.

Q. Do you know who writes the editorials for the Spanish edition of El Renacimiento?

Sr. SALAS: Objected to as the witness has not testified on that point.

186 The COURT: Objection overruled.
Sr. SALAS: Exception.

A. The director is the only one who can say anything about that matter.

Q. That is not answering my question: I asked you if you know who writes the editorials in the Spanish edition of El Renacimiento?

A. Any one of the employees of the paper, who may be indicated by the director.

Q. You have stated that the defendant, Martin Ocampo, had nothing to do with the editorials in the Spanish edition of El Renacimiento, did you not?

A. I mean to say with the employees of the editorial department, reporters, etc.

Q. Now do you know that he did not have anything to do with the editorial in question in El Renacimiento of October 30th, 1908?

Sr. SALAS: Objected to, because the witness has not testified on this point in direct examination.

The COURT: Objection overruled.

Sr. SALAS: Exception.

A. I believe he did not have anything to do with it.

Q. Then you know who did write and publish this editorial?

A. No.

Q. Then if you do not know who did write and publish this editorial, how do you know that Sr. Ocampo did not have anything to do with it?

The COURT: He has not said so.

187 Q. If you do not know who did write it, or who did publish it, why do you say you believe he did not have anything to do with it?

Sr. SALAS: Objected to on the ground that it is not proper cross-examination, the witness did not testify anything in regard to that matter in direct examination.

The COURT: Objection sustained, but not on the ground of the objection made.

Q. Why is it that you believe that the defendant, Sr. Martin Ocampo, had nothing to do with the writing or publishing of this article?

A. Because the director of El Renacimiento told me that Sr. Ocampo had nothing to do with it.

Q. Is that the only reason you have for saying that Sr. Ocampo had nothing to do with it, that the director told you?

A. That is one of the reasons.

Q. Who was this director who told you that?

A. Sr. Teodoro M. Kalaw.

Mr. SOUTHWORTH: That is all.

JAIME C. DE VEYRA, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?
A.. Jaime C. de Veyra.
Q. Where do you live?
A. At No. 209 Calle Nueva, Malate.
188 Q. What is your occupation?
A. Member of the Philippine Assembly.
Q. Do you know the newspaper El Renacimiento?
A. I do.
Q. Did you ever have any relations with that paper?
A. Yes sir.
Q. What sort of relations?
A. I was a correspondent for a certain time when I was at Cebu, and from the year 1905 I was one of the editors of this paper.
Q. For how long a time have you been editor of that newspaper?
A. For about a year, more or less.
Q. Can you tell us anything in regard to the organization of that newspaper?
A. Yes sir.
Q. Please tell us what you know about that.
A. The organization of El Renacimiento is similar to that of all newspapers written Spanish, which I understand is entirely different from the way in which American and English papers are organized. In Spanish newspapers the administrative department is entirely separate from the editorial department. The administrator is only in charge of the economic part of the paper, and everything relating to what policy the paper shall pursue comes under the control of the director, and all the written matter in the paper with the exception of the advertisements is under the control of the di-
189 rector also. The administrator only has control of the advertisements, but in the matter of communications which are sent to the paper, the insertion of which is paid for, which are not of public interest but only concern the sender, the administrator intervenes as well as the director: the administrator looking out for the payment of the communication and suggesting the place it shall occupy in the paper, and the director looking after the text to see whether it is deserving of publication, or not, and correcting the language or style or general tendency of these paid-for communications. That is all.
Q. Does any confusion arise from this joint intervention of administrator and director which has just been mentioned by you?
A. No sir.
Q. This organization which you have just explained, is that the way in which El Renacimiento was carried on when you were writing for that paper?
A. Yes sir.
Q. Do you know the present organization of that paper?
A. I have a motive for knowing it.

Q. Can you tell us if that organization which has just been explained in detail by you, is the same as that under which El Renacimiento is carried on at the present time?

A. I cannot answer that categorically, because I am not now working on that paper, but as far as my observation goes of the manner in which the paper is conducted, what I have observed from
190 my personal relations with the employees of the administrative department as well as those of the editorial department, I should say the organization has never been altered in that paper.

Sr. MORENO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. You have stated you have a motive for knowing what the present organization of that paper is, please state what that motive is?

A. I believe I have indicated that from what I have observed regarding the way in which the paper is conducted, it is carried on in the same way as when I was connected with the paper, and I say so on account of personal interviews I have had with the people who are carrying on the paper, both in the administrative department as well as the editorial department; there does not seem to be any change in the organization of the paper.

Q. Then the only thing you know of the present condition of that paper is what you have learned from conversations you may have had with members of the staff of that paper, or employees of that paper?

A. Not only by that, sir.

Q. Do you have any personal knowledge of how that paper is conducted now?

A. I base my knowledge on the fact that a radical change in the manner of conducting the paper could not be conceived, and I have reason to know also from the fact that in relation to some matters of concern to the paper they have consulted with me about it.
191 Q. How are the directors for that paper selected or appointed, and how are they paid?

A. As a regular thing the director who leaves the paper names his successor, but sometimes the editors who remain make the selection, and in regard to salary that matter is fixed between the editors and the administrator.

Q. Then the administrator does have a participation in the fixing of the salary to be paid the director?

A. Only so far as the economic part of the paper is concerned, he is the judge as to the amount of salary the paper can afford to give.

Q. Are the directors appointed by the administrator?

A. No sir.

Q. Well is their salary fixed by the administrator?

A. Not by himself alone.

Q. He pays the director the salary that is agreed on by the editors and himself, does he?

A. Yes sir.

Mr. SOUTHWORTH: That is all.

The hearing was then suspended until the following morning at half past eight o'clock.

NOVEMBER 25TH, 1908.

Pursuant to adjournment the case was called this a. m., with the same appearances.

FERNANDO MARIA GUERRERO, called in behalf of the defendant, being duly sworn, testified as follows:

192 Direct examination by Sr. MORENO:

Q. State your name?
A. Fernando Maria Guerrero.
Q. Where do you live?
A. At No. 41 Calle Gallera, Ermita.
Q. What is you occupation?
A. Member of the Philippine Assembly.
Q. Do you know the newspaper El Renacimiento?
A. Yes sir.
Q. Have you had any relations with that paper?
A. I have.
Q. Please state what they were?
A. When this newspaper was established, in the year 1901, I was the editor of its publication, and in 1903, when Sr. Palma resigned as director of the paper I took charge of that office until October 16th, 1907, when I was appointed member of the Philippine Assembly.
Q. Please state to the Court the organization of that newspaper, from the time you took part in it up to the time you left?
A. The ordinary constitution of that newspaper consisted in the formation of two departments, one whose functions were strictly editorial or connected with the printing of the paper, and the other having charge of the administrative department of the paper.
Q. Did any confusion ever result from the formation of these two departments?
A. No, and as a matter of fact they are entirely separate, the one has nothing whatever to do with the other.

193 Q. Will you please specify the functions of these two departments of the paper, administrative and editorial?

A. The functions of the editorial department, or the directory, consisted first in dividing up the work among the members of the editorial staff, and second in getting together the matter which had to be published daily in the paper, the writing of editorials and the examining and editing of all work presented to the director, and besides this the director is the one who receives all information, whether from the provinces or Manila, and it is his duty to inspect the same and give the necessary orders for the insertion in the paper of what he deems suitable.

Q. Now please specify the functions of the administrative department?

A. They are all of an economic character, it is the management of the financial part of the paper, it has control of the subscriptions received for the paper and the collection of all moneys paid for advertisements or notices, it attends to the payment of all salaries, whether of the editorial staff, the printers or employees of the administrative department.

Q. Has the administrator of the newspaper anything to do with the publication of articles in the paper?

A. No sir, nothing whatsoever.

Q. Who has charge of examining the articles and editorials before they are printed?

A. The director of the newspaper.

194 Q. Exclusively?

A. Yes sir, exclusively.

Q. Is it necessary first to consult with the administrator as to the publication of articles or editorials?

A. No sir, never.

Q. Does the administrator have an opportunity of knowing the articles and editorials before they are published in the paper?

A. He has no time at all to attend to that, as his administrative functions are continuous and occupy all his time.

Q. Do you know whether or not that organization which has just been described by you, and which you observed during the time you were connected with that paper, continues in the same way up to the present time?

A. As far as I know it does.

Q. On what do you base that conclusion?

A. On account of the fact that that is the practice followed by all Spanish and Filipino newspapers, and I can state further that I have considerable knowledge of this fact because I have been a member of the staff of several newspapers.

Q. Since you left the directory of that newspaper, have you had an opportunity of seeing the way in which this organization is carried on, the rule followed by them?

A. I know the organization has not been altered since I left up to the present time.

195 Q. Who selects and appoints the editorial staff?

A. The staff is appointed upon the recommendation of the director.

Q. Can the administrator appoint any member of the editorial staff without the knowledge of the director?

A. No sir, the knowledge of the director is an indispensable requisite.

Q. Do you mean to say by that that the appointment of the editorial staff is exclusively in the hands and under the control of the director?

A. Yes sir..

Q. What is the rule observed in the appointment of the editorial staff?

A. The ordinary practice is that the initiative comes directly from the director, but sometimes the appointment may be recom-

mended by the administrator, but in that case the approval of the director is always required.

Q. Now what is the rule followed in the appointment of a director for the newspaper?

A. The rule and custon followed is, that the director who is about to leave recommends the appointment of his successor to the administrator.

Q. Can the administrator object to the recommendation of the director who is about to leave as to the appointment of his successor?

Mr. SOUTHWORTH: Objected to as leading.

The COURT: Objection overruled.

Mr. SOUTHWORTH: Exception.

196 A. As a matter of fact he cannot object, except on the ground that the financial condition of the paper will not warrant the payment of the salary proposed.

Q. What part of the newspaper is it that comes under the immediate control and responsibility of the administrator?

Mr. GEORGE: Objected to as repetition, he has already stated at length that the administrator had charge of the economic part.

The COURT: Yes that has been answered more than once.

Sr. MORENO: That is all.

Cross-examination by Mr. GEORGE:

Q. Who is the owner of this newspaper El Renacimiento?

Sr. MORENO: Objected to as not proper cross examination.

The COURT: Objection sustained.

Mr. GEORGE: Exception.

Q. To whom were you responsible for your work on that paper?

A. I was responsible to myself, as director of the paper.

Q. The paper however is published by some party other than yourself, is it not, or was at the time you were in charge?

A. If there is any responsibility it would only be on account of the economic part, in which case the responsibility would lie between the director and the administrator.

Q. To whom is the administrator responsible for his conduct of the paper?

197 A. That is rather a complicated question, but I think I can answer you: if the administrator was at the same time the proprietor of the paper he would be responsible to himself, but if he is not the owner he would be responsible then to whatever entity the paper belongd to.

Q. You misunderstood me, I am not asking a hypothetical case, or asking a hypothetical question, I am asking to whom is the administrator responsible, if you know?

A. I believe I have answered that question, this is a matter of distinction only.

Q. Do you know to whom the accused, Sr. Ocampo, is responsible, if to anyone?

Sr. MORENO: I object to the continuation of such questions.

The COURT: The question is: do you know to whom he is responsible, and the witness can answer by "Yes" or "No."

A. I have answered already that in case the administrator is the owner of the newspaper also he would be responsible for himself, but if the newspaper belonged to an entity, partnership or society he would be responsible to that entity, partnership or society, corporation or association, whatever it might be.

Mr. GEORGE: I will ask that the question be read to the witness, and that he answer if he can.

198 The COURT: The question is: do you know to whom Sr. Ocampo is responsible, if to anyone?

A. I know that he is responsible to an organization or society.

Q. What is that organiaztion or society?

A. I know there is an organization, but I do not know the members of that organization.

Q. Do you know whether that was organized under the laws of the Philippine Islands?

A. I did not make that investigation, because my duties as director of that paper left me no time to spend for such a purpose.

Q. How long were you connected with El Renacimiento, Sr. Guerrero?

A. From the year 1901 until the year 1907.

Q. You were connected with the paper prior to that, connected in some capacity or other from its foundation, were you not?

A. No sir.

Q. Were you not one of the editors of the paper from its foundation?

A. I was one of the editors of that paper when it was established.

Q. And you never ascertained who was responsible, and who furnished the funds for the publication of that paper during all your years of service?

A. The only thing I know is, that there was an organization, but I never learned who formed that organization.

199 Q. You know there was an organization, do you?

A. I knew there was an organization.

Q. How do you know that?

A. By hearsay.

Q. Merely by hearsay?

A. Yes, I heard that was the case.

Mr. GEORGE: We ask that the declarations of this witness to the effect that there was an organization be excluded on the ground that it is hearsay.

The COURT: Motion denied.

Mr. GEORGE: Exception.

Q. Sr. Ocampo so far as you know had entire charge of the economic administration of this newspaper, did he not?

A. Yes sir, as administrator.

Q. Administrator for whom, or for what?

A. Administrator of the funds of the newspaper.

Q. He had all the funds in his charge and under his control absolutely had he not?

A. At least I did not see anybody else managing the funds of the newspaper except himself.

Q. Now you state that the editorial staff is under the control of the director?

A. Yes sir.

Q. And that when a member of the staff is to be appointed he is recommenced by the director?

A. The director is the one who always recommends the appointment.

Q. But does he propose the name of the person to be appointed?

200 A. As I have stated already the new member of the staff is recommended by the director, subject to the fact as to whether or not the financial condition of the paper will warrant the proposed salary.

Q. You propose the name of the man you desire appointed to the administrator, is that correct?

A. Yes sir.

Q. And then if the administrator conforms to that he appoints him and pays him?

A. The conformity of the administrator would be only concerning the financial condition of the paper, as to whether it would warrant the expense of the salary to be paid, that is all.

Q. Well, but the administrator appoints and pays him, does he not?

A. He pays him his salary, yes.

Q. Then why do you propose the name to the administrator, if he has nothing to do with it, and it is none of his business?

A. The director is the one to judge as to the capability of the man to be appointed, and not the administrator, and he makes the recommendation to the administrator that the man is fully qualified for the position, and on account of his profession he is the one to make such recommendation with full knowledge of the case.

Q. In other words, the director judges of the qualifications of the person to be appointed, and the administrator is the judge as to whether or not the financial condition of the paper will warrant the hiring of him and warrant the paying of the salary he asks?

201 A. Yes sir, that is how it is.

Mr. GEORGE: That is all.

ANGEL JOSÉ, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?

A. Angel José.

Q. Where do you live?

A. At No. 117 Calle Arlegui.

Q. What is your occupation?
A. Industrial.
Q. Do you know Sr. Martin Ocampo?
A. Yes sir.
Q. Do you know the newspaper El Renacimiento?
A. Yes sir.
Q. How do you come to know Sr. Ocampo and the newspaper El Renacimiento?
A. I know Sr. Ocampo because he is from Manila and I had transactions with him, and I know the newspaper because it is of general circulation.
Q. Have you any relations with the newspaper El Renacimiento?
A. None whatsoever.
Q. Did you have anything to do with the establishment of that paper?
A. Yes sir.
202 Q. Can you state to the Court in which way you took part in the founding of that paper?
A. I only remember that it was about seven years ago when Sr. Rafael Palma spoke to me about this matter and asked me to contribute something towards the founding of a Filipino newspaper, which was to be carried on for patriotic motives, that is to say do something for the benefit of the country.
Q. Was there any other aim besides that?
A. He also told me it was to cultivate a better understanding between the Filipinos and the Americans.
Q. Did you respond to that invitation of Sr. Palma?
A. Yes sir.
Q. Can you tell us in which way?
A. By turning over to him a certain amount.
Q. Do you remember how much that was?
A. Five hundred pesos.
Q. Did you not know the name of the paper before giving this money?
A. No sir.
Q. Under what conditions did you give that five hundred pesos?
A. As a contribution to be used for the benefit of the country.
Q. Upon giving that money did you expect to get some benefit or gain out of it?
A. No sir.
203 Q. Did you receive any interest from the time you gave that money in this way?
A. No sir.
Q. Did you ask them in what way they had invested that money?
Mr. GEORGE: Objected to as leading.
The COURT: Objection sustained.
Sr. SALAS: Exception.
Q. Did you know who was going to manage this fund to which you contributed?
A. To a certainty no, but I did suppose that Sr. Palma would be one of them.

Q. Did you know whether any newspaper was published for purposes proposed to you?
A. Yes sir.
Q. What act did you perform, or what investigation did you make, as to the management of that fund?
A. None.
Q. Why not?
A. Because I was not interested.
Q. Did you expect to receive back that contribution of yours?
A. No sir.

Mr. GEORGE: Objected to as leading, and I ask that the question and answer be stricken from the record.
The COURT: Objection sustained and motion granted.
Sr. SALAS: Exception.

Q. Do you know who had charge of the administration of that fund?
204 A. Do you mean in our fund?
Q. Yes.
A. Positively no, but it seems to me it was to be Sr. Palma.
Q. What is the first name of that Sr. Palma?
A. He was the oldest brother of Don Rafael Palma.
Q. Don't you remember his name?
A. No sir.
Q. And afterwards who had charge of the administration of that fund?
A. Afterwards I learned it was Sr. Ocampo.
Q. Do you know who is the actual proprietor of the newspaper El Renacimiento?
A. No sir.
Q. Are you not the proprietor to the extent of the amount contributed by you?
A. I do not know, I do not believe I am a proprietor because I gave that money as a gift to a patriotic fund.

Sr. SALAS: That is all.

Cross-examination by Mr. GEORGE:

Q. You gave this five hundred pesos as a patriotic contribution to establish a newspaper?
A. Yes sir.
Q. To establish the newspaper El Renacimiento?
A. I did not know whether it was El Renacimiento, or not.
Q. Did you, or did you not, contribute five hundred pesos to establish El Renacimiento?
A. Afterwards I learned that it was the newspaper El Renacimiento.
205 Q. And you expected that paper to be published here in Manila?
A. Yes sir.
Q. And according to your understanding it is published to this day in the city of Manila?

A. Yes sir.

Q. Did you give any directions as to how your money should be used when you made that contribution?

A. No sir, I was only told it was to be used for the benefit of the country.

Q. You did not caution them that they should be careful in publishing this paper, and confine it to patriotic uses and purposes?

A. No sir.

Q. So far as you know the responsible head, and the man who has absolute control of this fund and of the newspaper El Renacimiento, is Sr. Ocampo, the accused here?

A. I do not know that either, I cannot tell you as to that.

Q. He has charge of this fund and directs the paper, does he not?

A. It seems to be so, according to the paper.

Mr. GEORGE: That is all.

Redirect examination by Sr. SALAS:

Q. In case of a deficit in the management of that fund, what would be your proportion of the loss?

A. Nothing.

206 Q. And why not?

A. Why should I contribute in the losses?

Sr. SALAS: That is all.

FELIPE BARRETTO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?

A. Felipe Barretto.

Q. Where do you live?

A. At No. 12 Calle Alcala, Interior.

Q. What is your occupation?

A. Customhouse broker.

Q. Do you know Sr. Martin Ocampo?

A. Yes sir.

Q. How do you happen to know him?

A. Because he was a companion of mine in the same office.

Q. What office?

A. The office of Nello & Camps, which was represented by Sr. Ocampo in the year 1901.

Q. Do you know the newspapers El Renacimiento and Muling Pagsilang?

A. Yes sir.

Q. What relation have you got, if any, with these newspapers?

A. None whatsoever.

207 Q. Did you have anything to do with the founding of that paper?

A. Yes sir.

Q. State in regard to that matter to the Court what you did?
A. One day in the year 1901 or 1902, Don Martin Ocampo spoke to me about establishing a newspaper, and asked me if I would like to go in with them, that it was to give an opportunity to young men who desired to devote themselves to literature and writing.
Q. And what happened after that in relation to Sr. Ocampo?
A. Nothing that I know of.
Q. Was there any other aim or purpose besides that you have mentioned for establishing this newspaper?
A. Yes sir.
Q. What was the other purpose?
A. It was a patriotic purpose.
Q. What was that patriotic purpose?
A. It was to try to cultivate a better understanding between the Filipinos and the Americans.
Q. Do you know who the other persons were who contributed towards the establishment of that paper?
A. No sir.
Q. What did you do when Sr. Ocampo spoke to you about this matter?
A. I gave him a certain amount of money.
Q. How much?
A. Five hundred pesos.
208 Q. Under what conditions did you give that?

Mr. SOUTHWORTH: Objected to as immaterial.
The COURT: Objection sustained.
Sr. SALAS: Exception.

Q. Who is the proprietor of that newspaper?
A. Personally I am not familiar and have no knowledge as to who the owner is.
Q. Did the money you contributed not constitute you a proprietor to that extent?

Mr. SOUTHWORTH: Objected to as immaterial and as calling for the opinion of the witness.
The COURT: The witness may answer if he wants to.

A. I never thought or believed myself to be one of the proprietors, because I gave the money as a gift or donation.
Q. What benefit did you receive on account of that money?
A. None whatsoever, and I did not expect any either.
Q. Why not?
A. Because it was a donation or gift, and I did not expect any return for it.
Q. Do you know who is the administrator of this fund to which you and others contributed?
A. What time do you mean?
Q. What you know of former times, and now also?
A. I believe the administrator now is Sr. Ocampo.
Q. Did you make any objection?

A. I did not make any objection because I did not want to think any more about that gift or donation.

Q. Did you ever ask for a statement of account, as to how they had invested that fund?

209 A. No sir.

Q. In case of a deficit or loss, would you have to contribute?

A. No sir.

Q. Why not?

A. Because I do not consider myself a co-participant.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. To whom did you make a present of that money?

A. For the purpose of establishing a newspaper.

The COURT: The question is: to whom did you make a present of that money?

A. To Sr. Martin Ocampo.

Mr. SOUTHWORTH: That is all.

Sr. MORENO: We would like to ask for a suspension to enable us to procure other witnesses.

The COURT: What witnesses?

Sr. MORENO: Dr. Barrows, Dr. Saleeby and Mr. Otto Scherrer.

Mr. GEORGE: We would like it to appear of record that none of these witnesses have been subpœnaed up to this time.

The COURT: A recess will be taken to enable counsel for the defendant to prepare an affidavit in relation to the continuance of the trial.

Mr. SOUTHWORTH: I desire to call the attention of the Court to the affidavit already filed by counsel for the defendant, in which they state they desire to cross-examine the Governor-General further in this case. The Governor General is now here for the

210 purpose of being examined as a witness in the case of the United States vs. Lope K. Santos, and I would respectfully suggest that he be examined now in this case, as Counsel desire.

The COURT: Very well, the Governor General can be examined now in this case, as you desire.

JAMES FRANCIS SMITH, recalled in behalf of the defendant, testified as follows:

Direct examination by Sr. MORENO:

Q. Is it not true that Mr. Worcester, as Commissioner and as Secretary of the Interior, has not been in the mountains of Benguet for the purpose of classifying and measuring the skulls of Igorotes?

A. Not personally, but he has directed it to be done.

Q. Is it not true that Mr. Worcester, as Secretary of the Interior and as Commissioner, has not gone into these mountains to make investigations in regard to large deposits of gold and other metals?

A. He ordered the mining survey, he did not personally make

these investigations, and these investigations were made and published for the benefit of all.

Q. Is it not true that Commissioner Worcester has not ordered the slaughtering of cattle in the Bay of Manila?

A. Mr. Worcester, as I understand, gave no orders for the slaughtering of cattle in Manila, he simply announced that so far as the Bureau of Agriculture and the Secretary of the Interior were
211 concerned, there was no objection on their part.

Q. Is it not true also that Mr. Worcester in the same capacity has not devoted himself to studies in the Laboratory of Science and to the dissecting of insects?

A. He has that under his immediate direction and control; I mean in the sense that he is Secretary of the Department of the Interior, which has that particular branch of science under its executive direction.

Q. But personally he did not do it?

A. Not that I am aware of.

Q. Is it not true also that Mr. Worcester, as Secretary of the Interior and as Commissioner, has not been the only person who imported or brought fish eggs from Japan?

A. Personally he did not bring any fish eggs from Japan of which I am aware, but he directed them to be brought.

Q. Is it not true that Mr. Worcester, in the capacity already mentioned, in making his trips to Mindanao it was for the purpose of discovering wealthy lodes and veins of ore in that island, and for the same purpose in the island of Mindoro?

A. His primary object, as I know, in visiting Mindanao was the bettering of the condition of the wild people and semi-civilized people in that island. I suppose that incidentally, seeing that it was fine agricultural country, he would so report to the Government, and in fact he did so to me.

212 Q. Is it not also true that Mr. Worcester, as Secretary of the Interior and as Commissioner, has not promoted the sale of land to the city of Manila through secret agents and partners?

A. Mr. Worcester was concerned in the purchase by the Insular Government of one piece of land, part of which was for the Bureau of Science and medical school and hospital, and part of which was transferred to the city for a street.

Q. Was it Mr. Worcester personally who did that?

A. He carried the negotiations to a conclusion, which were finally submitted to the Commission and approved.

Q. Is it not true that you are the one who proposed that sale to Mr. Worcester?

A. I originated the purchase of this property but subsequently abandoned it and declared the sale off, for the reason that there was a purpose upon the part of the seller to claim more land that he was shown by the survey to be entitled to.

Q. Is it not true that Commissioner Pardo Tavera had also intervened in that matter?

A. Yes, that was in the beginning, but the final negotiations were largely, and I believe exclusively, carried on by Mr. Worcester.

Q. Is it not true that Mr. Worcester has neither proposed nor promoted the concession of a hotel site on filled-in land, or land for the erection of a hotel?

213 A. I have not insinuated that he was the only member of the Commission who has bought land, I myself negotiated the sale of the Oriente Hotel.

Q. I refer to land for a hotel site?

A. He took part in deliberations on that subject, not as actively as I did probably, as the Secretary of War gave me special instructions that the question of establishing a modern hotel in the city of Manila should no longer be neglected; that it was one of the great causes of the backwardness of the city of Manila, and that steps should have been taken long before to remedy that state of affairs; consequently I was more active in this than was Mr. Worcester, whose participation in it was of the lightest kind, and simply as a member of the Commission.

Q. Is it not true that the part Mr. Worcester took in that was merely to vote in the Commission for the concession?

A. No, he took part in the deliberations the same as any other commissioner.

Q. And that was all the effort made by him?

A. Yes sir.

Q. Is it not true that there are other persons who have ascended the mountains of Benguet to make ethnological studies besides Commissioner Worcester?

A. None except under his direction, with the possible exception of some two or three persons who came from universities or societies in the United States, and who went there with such aid and

214 assistance as Mr. Worcester and the Philippine Commission could give them in the way of information.

Q. Is it not true that Dr. Barrows and Mr. Otto Schirr went to the mountains of Benguet for the purpose of making similar studies?

A. Years ago when the Division or Bureau of Non-Christian Tribes was in existence, and when that bureau was under the control of the Bureau of Education and while I was Secretary of Education, Dr. Barrows did make such studies, and Professor Moses also when I was Secretary of Education, but that bureau was subsequently eliminated and was made a Division finally of the Bureau of Science, and passed under the control of the Secretary of the Interior as executive head.

Q. Is it not true that there were other persons, private persons, who have been in those mountains to make investigations in regard to mining?

A. A great number of persons have gone into these mountains and are still there, investigating the mineral resources on their private account.

Q. And there are many other persons throughout the Philippine Islands who make trips for the purpose of discovering the wealth of the islands for their own benefit?

A. Oh yes, a number of tourists have come here and journeyed through the islands for the purpose of ascertaining the wealth of

the islands, some for curiosity, some to write articles, and others unquestionably with the idea of the future and the investment of their own capital.

215 Q. And these private individuals who went to Benguet for the purpose of investigating the mining wealth, did that for their own personal benefit or for the benefit of organizations which they represented?

A. Yes, the Government does not exploit any mines, except that the United States Government has some interest in a coal mine in Bataan, as a military reservation.

Q. Is it not true that in this slaughtering of cattle there are officers who work under the law or orders of the city of Manila, outside of Mr. Worcester?

A. That depends upon what is meant by the word slaughtering if you mean order of killing, if it means killing for food, Mr. Worcester does not order animals killed for food purposes, he orders the killing of animals that are infected with contagious diseases, and may if he chooses offer no objection to their being consumed for food.

Q. My question is whether there are not other persons besides Mr. Worcester who are responsible for the killing of animals?

A. The killing of animals infected with disease is under the control of Mr. Worcester and the Bureau of Agriculture.

Q. I mean the order to kill?

A. Mr. Worcester has nothing to do with ordering the killing of animals for food.

Q. So that belongs to another person?

A. It belongs to the local authorities, the places of killing animals for food. Animals infected with disease, however, may in

216 the discretion of the Secretary of the Interior be used for food, and he may offer no objection to their being slaughtered for that purpose, if he so desires, but if he prohibits the slaughtering of such animals for food purposes then no other funtionary of the Government has a right to interfere and order the slaughtering of such animals for food against his will.

Q. But is it not true that the killing of diseased animals comes under the immediate control of the Bureau of Agriculture?

A. Subject to the order of Mr. Worcester, as Secretary of the Interior.

Q. But the Director of the Bureau of Agriculture could order that killing?

A. Under rules which Mr. Worcester prescribes and approves.

Q. But under the rules established before that?

A. Yes, by the Secretary of the Interior, that is he approves the rules. No rule can be put into effect for any of these purposes except with the approval of the Secretary of the Interior.

Sr. MORENO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. You have stated that you originally intervened as a member of the Commission in the negotiations for the purchase of certain

land for the Insular Government and for the city of Manila,
217 and that finally this matter was taken up by Commissioner Worcester?

A. My negotiations with it had concluded.

Q. And negotiations for the purchase of the same land was taken up afterwards by Commissioner Worcester?

A. Yes sir, subsequently.

Q. I will ask you if the negotiations were consummated, if the land was bought?

A. It was consummated under the direction of Mr. Worcester, and on his recommendation.

Q. I will ask you if it was not finally bought for about one-fourth of the price they asked you for it, when you were negotiating for that land?

A. That was one of the reasons that the negotiations fell through.

Mr. SOUTHWORTH: That is all, Governor.

Sr. MORENO: We now offer in evidence what purports to be a contract in regard to the employment of Sr. Kalaw, and ask to have it marked Exhibit D3.

Mr. GEORGE: We admit that this contract is what it purports to be, but object to it on the ground that it has not been properly identified, and furthermore as immaterial and irrelevant.

The COURT: It may be received.

Mr. GEORGE: Exception.

The hearing was then suspended until eight o'clock, December 2nd, 1908, for the purpose of taking the testimony of Dr. Barrows and Dr. Saleeby in behalf of the defendant.

218 DECEMBER 2ND, 1908.

Pursuant to adjournment this case was called this a. m., with the same appearances.

N. M. SALEEBY, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?

A. N. M. Saleeby.

Q. Where do you live?

A. At the University Hospital, No. 295 Calle Magdalena.

Q. What is your occupation.

A. Doctor of Medicine.

Q. Have you traveled over the Philippine Islands?

A. Yes sir.

Q. What provinces?

A. I have traveled through Luzon, and I have been to Mindanao and the Sulu Islands.

Q. Have you made any ethnological studies in regard to the races of the Philippine Islands?

A. I have studied the general origin and history of the Moro tribes.

Q. Were these studies made by you published?

A. Yes sir, some of them have been published. There have been two publications by the Bureau of Science of my studies on Moro history, religion and law, and a history of Sulu.

219 Q. And aside from Sulu and Mindanao, did you make any other studies of races in the Philippine Islands?

A. Not at all.

Q. Have you ever been in the mountains of Benguet?

A. I was once on an official trip to Baguio and back.

Sr. MORENO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Did you ever ascend the mountains of Benguet for the purpose of making scientific study of the Igorotes?

A. Never, sir.

Q. Did you ever take any part in making any of the laws or amending the laws governing the mining interests in the province of Benguet, or anywhere in the Philippine Islands?

A. I have no interest of any kind among the Igorotes.

Q. Did you ever import any fish eggs into the Philippine Islands?

A. No sir.

Sr. MORENO: I object to this as immaterial and not proper cross examination.

The COURT: Objection sustained.

Mr. SOUTHWORTH: That is all.

DAVID P. BARROWS, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?

A. David P. Barrows.

220 Q. Where do you live?

A. At Manila.

Q. What is your occupation?

A. Director of Education.

Q. Have you made any trips to the Philippine Islands?

A. Yes sir.

Q. Have you been in the mountains of Benguet?

A. Yes sir.

Q. Have you made ethnological studies there in regard to the races of the Philippine Islands?

A. Yes sir.

Q. Have you made any ethnological studies in regard to the Igorotes at Benguet?

Mr. GEORGE: We object to this line of evidence unless it is sought to show by the defense that this libellous article refers to Dr. Barrows instead of Mr. Worcester.

The COURT: Objection overruled.

Mr. GEORGE: Exception.

A. I have made preliminary studies of that sort upon the people of Benguet.

Q. What position did you hold before this present one you have?

A. I was Chief of the Bureau of Non-Christian tribes, afterwards called the Ethnological Survey.

Q. As director of the bureau of non-Christian tribes, what duties did you have?

A. The duties are fixed by law, and amplified by the instructions of the Secretary of the Interior. They were to conduct investigations upon the non-Christian tribes of the Archipelago,
221 particularly to determine their numbers, location and condition, and to recommend legislation for their administration.

Q. These studies which you made in regard to the Igorotes of Benguet, were they published?

A. Yes sir.

Q. Did you publish any report in regard to these tribes?

A. Three annual reports, I think, but they were not extensive in character.

Q. Have you been in Mindoro?

A. Yes sir.

Q. As an official of the Government?

A. Yes sir.

Q. For what purpose?

A. I visited Mindoro twice, once when I was Chief of the bureau of non-Christian tribes, and once when I was Superintendent of Schools.

Q. And the first time you went as the chief of non-christian tribes, for what purpose did you go?

A. It was to visit some of the Manayas of Mount Halcon.

Q. Did you succeed in making the studies which carried you there?

A. I succeeded in seeing these people.

Q. Did you publish the results of your studies there?

A. Nothing especial, no sir.

Q. Have you been to Mindanao?

A. Yes sir.

222 Q. Also to study the tribes existing there?

A. Yes sir.

Q. And were your studies there published?

A. No sir.

Q. These trips made by you for the purpose of studying the races of the Philippine Islands, were they published?

A. The official trips were, yes sir.

Sr. MORENO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Who was Secretary of the Interior at the time you made these investigations?

A. Mr. Dean C. Worcester.
Q. Who issued the instructions to which you have referred, under which you made these investigations?
A. Secretary Worcester.

Mr. SOUTHWORTH: That is all.

JOSE MARIA ROMERO Y SALAS, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. MORENO:

Q. State your name?
A. José Maria Romero y Salas.
Q. Where do you live?
A. Santa Mesa Heights.
Q. What is your occupation?
A. Director of El Mercantil.
Q. How long have you been a journalist?
A. I believe about thirty years, I cannot state exactly.
223 Q. Can you explain to us the organization of Spanish and Filipino newspapers?

Mr. SOUTHWORTH: Objected to as incompetent and immaterial, the case was not for such evidence.
The COURT: It may be allowed, but they will have to stop with this witness.

A. I can give some testimony in regard to my experience in European and Filipino newspapers.

The COURT: It is immaterial about European newspapers.

A. In regard to the mechanism of a newspaper, according to the Spanish system and which I believe is followed by the Filipino newspapers, the editorial function consists of one entity, director and editor, what we call the responsible editor in accordance with the Spanish law. This director has under his control everything regarding the editing of the newspaper, and there is under him all the staff of the paper and the mechanism also. Therefore there is an essential difference between the editorial direction and the administration, and the administration itself is under the subordination of the director, and by virtue of this organization the director is responsible for everything which is published and inserted in the newspaper. The notices and advertisements are under the control of the administration, which is subordinate to the editorial part and comes under the inspection and supervision of the director of the paper, and without his consent they could not be published; so the only person who is responsible for everything which is published in the paper is the director or responsible editor, and the ad-
224 ministrator is nothing else but a functionary delegated by the empresa to attend to the administrative or accounting part of the paper.
Q. Who appoints the director?

A. If the newspaper is the property of an entity, the entity appoints the director.

Q. Is not the director the one who appoints the administrator?

A. The administrator is appointed at the request and proposal of the director.

Q. Does the editorial work of the paper sometimes go to the administrator for sanction and inspection?

A. Absolutely never, he has nothing whatsoever to do with it.

Q. Does the director at any time consult with the administrator in regard to matters of news which is going to be published in the newspaper?

A. As a matter of fact it is not necessary and the director is never required to consult in any way with the administrator, even in case of mercantile notices or anything of that sort.

Q. Can you tell us if this is the system followed by Filipino newspapers?

A. As I have occasion to know the same rule is followed until now.

Sr. MORENO: That is all.

Mr. SOUTHWORTH: No cross-examination.

225 Sr. SALAS: I offer in evidence the sentence in Case No. 2215, entitled "The United States vs. Martin Ocampo", to sustain the contention of autrefois acquit.

Mr. SOUTHWORTH: Objected to as incompetent, irrelevant and immaterial.

The COURT: The objection is sustained as incompetent, but you may file the record as an exhibit, showing the complaint and sentence of the Court in a former case of the Government against the same defendant.

Sr. SALAS: Exception.

Sr. MORENO: The defense rests.

Mr. SOUTHWORTH: We have nothing further to offer.

The COURT: The case is closed.

I certify that the above is a correct transcript of shorthand notes taken by me of the proceedings in Criminal Case No. 4295, entitled "The United States vs. Martin Ocampo", in the Court of First Instance for the City of Manila, on the 18th and 24th of November and on the 2nd of December, nineteen hundred and eight.

(Signed) WM. M. BARRINGTON,
Official Reporter.

226 PLAINTIFF'S EXHIBIT "A."

Editorial entitled "Birds of Prey," published in the newspaper "El Renacimiento," October 30, 1908:

"Birds of Prey.

On the surface of the globe some were born to eat and devour, others to be eaten and devoured.

Now and then the latter have bestirred themselves, endeavoring to rebel against an order of things which makes them the prey and food of the insatiable voracity of the former. At times they have been fortunate, putting to flight the eaters and devourers, but in the majority of cases they did not obtain anything but a change of name or plumage.

The situation is the same in all the spheres of creation: the relation between the ones and the others is that dictated by the appetite and the power to satisfy it at the fellow-creature's expense.

Amongst men it is very easy to observe the development of this daily phenomenon. And for some psychological reason the nations who believe themselves powerful have taken the fiercest and most harmful creatures as emblems: it is either the lion, or the eagle, or the serpent. Some have done so by a secret impulse of affinity and others in the nature of simulation, of infatuated vanity, making themselves appear that which they are not nor ever can be.

The eagle, symbolizing liberty and strength, is the bird that has found the most adepts. And men, collectively and individually, have desired to copy and imitate the most rapacious bird in order to triumph in the plundering of their fellow-men.

There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire.

Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

Presenting himself on all occasions with the wrinkled
227 brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

Patronizing concessions for hotels on filled-in land, with the

prospect of enormous profits, at the expense of the blood of the people.

Such are the characteristics of the man who is at the same time an eagle who surprises and devours, a vulture who gorges himself on dead and putrid meats, an owl who affects a petulant omniscience, and a vampire who silently sucks the blood of the victim until he leaves it bloodless.

It is these birds of prey who triumph. Their flight and their aim are never thwarted.

Who will detain them?

Some share in the booty and the plunder. Others are too weak to raise a voice of protest. And others die in the disconsolating destruction of their own energies and interests.

And then there appears, terrifying, the immortal legend: Mane, tecel, phares."

228 PLAINTIFF'S EXHIBIT "B."

Article published by the newspaper "El Renacimiento," October 27, 1908, in its "Gossip" column, as follows:

"They say that some persons advocate that a business man be appointed as member of the Honorable Philippine Commission. But it is also said that there is already a business man in that legislative body, not counting Commissioner Forbes who, besides being a distinguished clubman and brilliant sportsman, is a great expert in railroad matters, navigation, commerce, etc. This must be true because the man from Boston is absent and nevertheless * * * there is something rotten in the Ayuntamiento. What smells rotten is the meat of the twenty-one fat cows of Lack & Davis, W. Dean & Co., Limited."

229 PLAINTIFF'S EXHIBIT "C."

Article published in the newspaper "El Renacimiento," October 26th, 1908:

"Violation of the Ordinances—Authorities Implicated—Have We Eaten Infected Meat?

This morning, contrary to all expectations, the Municipal Board of Manila, whose ordinances seem to apply only to drivers and other common folk, was struck by a sense of justice, and denied the petition of Lack & Davis for a privilege.

Several days ago we published something about a certain violation of a City ordinance which the City Fathers preferred to cover up rather than incur the wrath of a Secretary of the Interior under whose authority the violation had been committed.

In the Bay, on board a ship, quite a number of heads of cattle had been slaughtered and the meat was sent to the market in violation of the rules governing the importation of foreign cattle.

Last Thursday Mayor Roxas presented a motion to the Municipal Board calling for the prosecution of Lack & Davis, the importers of said cattle, for violation of the ordinance relating to the slaughter-house. Lack & Davis adduced in their favor the authorization of Mr. Worcester and Mr. Nesom of the Bureau of Agriculture. These names having been invoked, members McDonnell, Welch and Wylie objected to the Roxas motion.

Roxas asked whether a letter from a Commissioner could justify the violation of a City ordinance. Welch answered that it could not but that it would do no good to antagonize Worcester.

It clearly appears that Mr. Worcester is the one responsible for the violation, but, he being the Secretary of the Interior, the Board preferred to ignore the matter. The only action taken was to appoint Welch as a committee of investigation. The result of the investigation can be safely predicted.

Late on Saturday Lack & Davis presented a petition to the Board for authority to slaughter certain cattle on board without payment of the regular fees. The petition was referred to Mayor Roxas for an opinion and the Mayor, after hearing the parties, recommended that the petition be denied but suggested, however, that the cattle might be brought directly to the slaughter-house, provided the Bureau of Agriculture had no objection.

230 The Mayor's report was submitted to the Board this morning. Considering what had occurred on Thursday, it looked as though the motion would be rejected to please Lack & Davis and the Insular authorities who shielded them. The motion, however, was carried in a moment of justice. * * *

But will the Bureau of Agriculture give its permission?

The slaughtering which gave rise to the incident of last Thursday was not precisely for the purpose of avoiding the payment of the regular fees. If such had been the object, there was no necessity for the importers to apply to such a high man as Worcester. But there is something more serious.

Is it true that in the last shipment, the one unlawfully slaughtered, there were some cases of plague?

If this is true, then it would be very easy to ascertain the real object; to avoid a strict quarantine during which more cattle would have probably died, the animals were slaughtered on board. The importers have thus only lost the animals which had already died. But, who will assure us that the rest of the cattle, the cattle which were actually slaughtered, were in good condition?

When they have gone to such an extreme, it is to be presumed that the importers have not stopped to make a careful investigation in the interests of the public by separating the infected animals from the healthy ones. In violation of all sanitary rules, and through the benevolence of the corresponding authorities, infected meat has undoubtedly been sold in the Manila market.

We will see what the Bureau of Agriculture will do with the shipment which is expected to arrive tomorrow morning and for which authority to kill the cattle in the Bay has been requested.

The Custom House authorities too must have something to do

with this matter unless they have the same reasons and take the same position in regard to it as did Mr. Worcester and Dr. Nesom.

The shipment was of live cattle, to be imported into Manila. But instead of this, dead cattle is what they brought in. Have the Custom House authorities failed to notice it? This would be the limit?

How can we expect to put this City into a sanitary condition when the laws and regulations governing importation and sanitation are so boldly violated, whenever it suits business, by the mere whim and fancy of the very authorities called upon to see to the enforcement of the laws and ordinances?

Nothing will happen to Lack & Davis because they are shielded by men high up. The Prosecuting attorney will not interfere with them, notwithstanding the evident violation committed.

The all important thing is to please Worcester!"

231 DEFENDANT'S EXHIBIT "1."

MANILA, *January* 2, 1906.

Mr. Lope K. Santos.

MY DEAR FRIEND: At the time you assumed control as Editor of "Mulig Pagsilag", the Tagalog edition of the newspaper "El Renacimiento", it was explained to you that the condition required by the paper was that you as such Editor should be the only one responsible for all articles appearing in the Tagalog edition, except business advertisements which will be under the control and exclusive responsibility of the Business Manager for the reason that the latter on account of his many duties, and the fact that the paper goes to press too late in the evening, is unable to read the articles published before the paper is circulated. Please, therefore, be kind enough to state at the bottom of this letter that you ratify your acceptance of the position as the only responsible Editor of "Mulig Pagsilag", the Tagalog edition of the newspaper "El Renacimiento".

Yours truly,

(Signed) M. OCAMPO,
Business Manager.

The Business Manager:

I hereby accept all the conditions imposed as above set out as the only responsible Editor of "Mulig Pagsilag".

(Signed) LOPE K. SANTOS.

232 DEFENDANT'S EXHIBIT "2."

The Renacimiento.
Independent Filipino Daily.
English Edition.

P. O. Box 775, Manila; Tel. No. 108; Telegraphic Address, Renacimiento.
Business Manager, Martin Ocampo.

MANILA, *Sept.* 27, 1908.

Mr. Pedro Aunario Rivera.

MY DEAR FRIEND: On October 1st next there will be published what will be known as "The Renacimiento", English edition, and you are hereby appointed editor of the said paper at a salary of eighteen hundred pesos per annum, with the express condition that all articles published in the said English edition shall be carefully read by you before the paper goes to press, and that you will, therefore, be the only responsible Editor of said paper except as to business advertisements which will be under the control and exclusive responsibility of the business manager, who, on account of his many duties and by reason of the fact that the paper goes to press too late in the evening, is unable to read the entire issue before the paper is distributed and circulated.

Please state whether or not you accept the above conditions.

(Signed) M. OCAMPO.

I hereby accept the above appointment under the condition therein mentioned as to my sole and exclusive responsibility.

(Signed) P. AUNARIO.

233 DEFENDANT'S EXHIBIT "3."

MANILA, P. I., *October* 12, 1907.

Mr. Teodoro M. Kalaw.

MY DEAR FRIEND: Mr. Fernando Ma. Guerrero having been elected as Delegate to the Philippine Assembly from the 2nd District of this City, you are hereby designated to take his place from the 16th instant as the Editor in Chief of the Spanish edition of the newspaper "El Renacimiento" at a salary of two thousand pesos per annum, with the express understanding that as such Editor you will be the only one responsible for all articles which may be published in the said Spanish edition, except the business advertisements which will be under the control and exclusive responsibility of the Business Manager, this for the reason that the Business Manager, on account of his many duties and the fact that the paper goes to press too late in the evening, is unable to read the articles and news published before the paper is distributed and circulated.

Please state at the bottom of this letter whether or not you accept the above conditions before entering upon the discharge of your duties as such Editor of "El Renacimiento".

Yours truly,

(Signed) M. OCAMPO,
Business Manager.

I hereby accept the position under the conditions above set out.
Manila, October 13, 1907.

(Signed) TEODORO M. KALAW.

234 DEFENDANT'S EXHIBIT "10."

Clerk's Note.

This exhibit is a printed pamphlet covering 211 printed pages, containing what purports to be copies of the complaint, briefs filed by the prosecution and the defence, and separate judgments rendered by the trial court in Criminal Case No. 2215 of the Court of First Instance of the City of Manila, entitled The United States, Plaintiff, versus Fernando Maria Guerrero, Martin Ocampo and Lope K. Santos, Defendants, for the crime of libel.

At the request of Mr. Felipe Agoncillo, attorney for the defendants Martin Ocampo and Teodoro M. Kalaw, and for the sake of brevity, only the complaint and the separate judgment of the Court of First Instance acquitting Martin Ocampo, one of the defendants in that case and also a defendant in this case, are certified with this record.

J. E. BLANCO, *Clerk.*

The complaint is as follows:

235 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

THE UNITED STATES, Plaintiff,
vs.
FERNANDO GUERRERO, MARTIN OCAMPO, and LOPE K. SANTOS,
Defendants.

Libel.

Complaint.

The undersigned accuses Fernando Guerrero, Martin Ocampo, and Lope K. Santos of the crime of libel, committed as follows:

That for many months past and particularly on and about the 7th day of June, 1905, the said Fernando Guerrero, Martin Ocampo, and Lope K. Santos were all and each residents of the city of Manila,

Philippine Islands, and they and each of them were authors, editors, proprietors, owners, directors, manager, administrators, writers, printers, and publishers at all times above alleged and particularly on and about the said 7th day of June, 1905, of a certain daily newspaper known as "El Renacimiento" published during all of the time mentioned above in the city of Manila, Philippine Islands; that the said newspaper was on and about the said 7th day of June, 1905, and for a long time prior thereto printed, edited, published and circulated daily by the said defendants and each of them in both the Spanish and Tagalog languages in the City of Manila, Philippine Islands, and had during all the time aforesaid a large circulation in the City of Manila and throughout the Philippine Islands and in the pueblo of Bacoor, Province of Cavite, in the said Philippine Islands; that on or about the said 7th day of June, 1905, in the City of
236 Manila, Philippine Islands, the said Fernando Guerrero, Martin Ocampo, and Lope K. Santos, as authors, editors, proprietors, owners, directors, administrators, managers, writers, printers, and publishers of the said newspaper "El Renacimiento" in the said city of Manila, Philippine Islands, willfully, unlawfully, feloniously and with the malicious intent to injure one David J. Baker, Jr., who was at all times herein mentioned and still is a Captain in the regular army of the United States assigned to service and duty in the Philippines Constabulary with the rank, pay, and allowances of Colonel in the United States army, and residing in and assigned to duty in the Philippine Islands, and with malicious intent to impeach the honesty, virtue, and reputation of the said David J. Baker, Jr., both as a man and an official of the United States in the Philippine Islands, and to expose the said David J. Baker, Jr., to public hatred, contempt, and ridicule, did then and there print, publish, and circulate and cause to be printed, published, and circulated in a regular daily issued of the said newspaper "El Renacimiento" of the date of June 7th, 1905, of and concerning the said David J. Baker, Jr., a certain false, injurious, and malicious defamation and libel tending to impeach the honesty, virtue, and reputation of the said David J. Baker, Jr., and expose him, the said David J. Baker, Jr., to public hatred, contempt, and ridicule; that the said libel was printed and published in both the Spanish and the Tagalog languages; that the said publication in the Spanish language was as follows:

237 "Reconcentration in Bacoor.

Most Serious Situation.

Alarming rumors of outrages and vexations, unspeakable abuses, groans and lamentations of victims—all like discordant notes of fear-afflicted voices—reach us today from the pueblo of Bacoor, in the neighboring province of Batangas.

In view of the state of affairs prevailing there, we ask ourselves this question: What is going on in Bacoor?

We are informed that they have reconcentrated the inhabitants of the barrios of Ligas and San Nicolas on a piece of private land sit-

uated on the sea shore, where the poor reconcentrados live subjected to rigorous surveillance, not being permitted to leave the place. They sleep mixed together in motley heaps, men, women and children exposed night and day to the inclemency of the weather. Every afternoon the roll is called, and woe betide the one found absent! He is confined in the dungeon, and there, perhaps, maltreated.

Some residents of the neighborhood, touched by the sad plight of the reconcentrados, several times invited some of them to pass the night in their houses, but they, fearing to bring harm upon their sympathizers, have refused such favors.

Because of this, miserable is the lot of the unhappy reconcentrados; agriculture is abandoned, and children of ten to twelve years of age from Bacoor have to go to Banacayan to gather on the sea shore a certain kind of shell-fish called "Butil," now the food of the majority of the residents of the pueblo.

From among these, the middle-class people, or those who possess something, or who are rich, are called before the Chief of the Constabulary, who addresses them the following question:

"What do you desire?"

And, like any peaceful citizen, they reply:

"Pacification."

It is the only thing they could desire.

"Then," says the inexorable Chief, "take to the field and capture bandits."

If these persons return without having caught anyone, they are locked up in a foul dungeon in the lower story of the convent.

Mr. Felix Cuenca who, as stated by us in a previous issue, had been released, together with others, for having captured twenty-one individuals, has been again returned to the lockup by order of the Chief of Constabulary. He had promised the surrender of thirteen more people, but was only able to bring in one. Upon questioning this prisoner, it appears he confessed that as a matter of fact there were thirteen who were going to surrender, but that when the designated moment arrived, he sent four of his companions to search for the rest, who did not appear; for which reason he decided to give himself up alone.

It appears that this declaration was not satisfactory and Mr. Cuenca was again locked up in the dungeon.

Another fact, also worthy of being mentioned, is the fol-
238 lowing:

Mr. Nicolas Gonzales was sent for by the Chief of the Constabulary. When in his presence, they demanded that he go out in pursuit of the bandits; this he refused to do, saying:

"I cannot go out in pursuit of that class of people, who as you know, hate those who possess anything, and as I have a little something, I cannot go without risking my skin. As you will understand, I value my life highly; I prize it very much, and I cannot serve you on this occasion. The Constabulary are the people who have to do such work."

A violent, resounding blow was the reply he received.

"Don't treat me that way. I am a man and not an animal," he said in protest.

This was sufficient to cause him to be tied elbow to elbow and to be conducted to the dungeon.

These facts, which are but the pale reflection of the reality, have caused the peaceful residents of Bacoor to become alarmed, and they are little by little losing their faith in human justice.

We respectfully represent to the Government the gravity of th situation in that pueblo. There is yet time to do something."

That the publication in the Tagalog language was as follows:

"The Disturbances in Bacoor.

Narrative of Some Events.

The faint murmurs which for some time past have been insistently heard in regard to happenings at Bacoor have changed to cries that have reached even us.

The news that comes to us makes us lose hope and impels us to believe that abuses are committed there daily against the peaceful residents.

One by one we will relate these happenings, for the information of our readers.

Conditions in Bacoor.

Business is paralyzed. The country people cannot till their lands in view of the fact that Colonel Baker and Inspector Ramos consider the well-to-do as persons of distinction in the pueblo and compel them to take to the field in search of Felizardo. If any of them returns without bringing with him a prisoner, he may be sure he will be shut up under the convent for a week or two.

An Evident Sign.

The reason we say that is that pueblo famine approaches is that boys and girls go as far as Binacayan simply to get a kind of mollusk called "butil." Binacayan is at a considerable distance from Bacoor; nevertheless those little children go that far in order that they may obtain food to ward off hunger and escape starvation. It 239 is logical to suppose that those children who ought to be in school acquiring an education are instead being wetted in the sea; and all this simply because they have to struggle for an existence.

Condition of the Prisoners.

If the children merit our pity those who are confined under the convent still more deserve it. They are innocent. If they find themselves prisoners it is not because they are sympathizers with Felizardo's bands; on the contrary, they are their enemies, and the authorities can repose confidence in them. Why, then, are they there?

Hark to the rumors. Baker and Ramos send for the well-to-do and leading persons of the town and when they appear before them they are asked the following questions:

"What do you think of the disturbances now going on here?"

"We want to have peace prevail."

"Is that so?" they reply; "then you can start out at once. Hunt through the forests and fields in search of Felizardo."

Whether they want to go or not, they have to do so. If on their return they cannot produce any prisoners because they value their own lives highly, they are at once put into jail and kept there. No one can communicate with them nor can their wives or relatives take them food. They furnish them with food, but what kind?

They sleep upon the bare and dirty brick floor. There they are in the midst of decaying matter, among human excrement and other things.

How the Constabulary Repays Favors.

The exploits of the Constabulary are not a few, but their way of repaying favors done or services rendered them is very nice. The favored one is Sr. Felix Cuenca, a well-to-do citizen of Bacoor, who is still a guest of Baker and Ramos in their pig-sty.

They also told Sr. Cuenca that he had to go out into the forests to search for Felizardo; he obeyed, and by good luck found some twenty-one persons willing to surrender themselves. This circumstance saved him; but they did not leave him in peace; they sent him out to make further search. Once Sr. Cuenca said that there were thirteen persons who were willing to give themselves up. It is unnecessary to state that Baker made all preparations, but when they reached the place they found but one person, and according to him, Felizardo overtook his companions. In view of this Baker became furious and put the man who surrendered as well as Sr. Cuenca in jail.

This is the way the Constabulary reciprocates favors.

It is a Crime to Give Reasons.

In Bacoor it is an offense to give reasons. Sr. Nicolas Gon-
240 zales was one of those who were caught. On appearing before the Constabulary chief and being told to take the field, he replied that he could not do so, as he valued his life, and that such work was not the duty of a peaceful citizen, as there were troops especially for that purpose.

This reply made his auditors furious, and caused them to strike him and to tie him elbow to elbow.

Then this man gave a shriek, and many heard him say:

"Don't maltreat me; I am a man, not an animal."

But this availed him nothing; in reply to this energetic protest Ramos ordered the shackles put on the feet of the victim and he is still a prisoner. So that it is wrong to give reasons in Bacoor.

What is the "Pass?"

The "pass" is what may now be called the great personal guaranty in Bacoor. If, for example, a person from there desires to come to Manila he needs a "pass." But not everybody can enjoy this

privilege. Those who issue the passes have a certain custom. Before giving a pass to anyone, more especially if they see he is intelligent, they first send him to the field and if he returns without bringing in anybody, he may be quite sure that it will not be to Manila that he will go, but to the basement of the convent.

More in regard to the "pass." We are informed that between Pasay and Palanyag (Rizal, not in Cavite) there is need of a "pass." It is said that there are Constabulary guards there who exact it of the passers-by.

Two Barrios in Distress.

And to clinch all this rigorousness comes the reconcentration of the residents of the barrios of Ligás and San Nicolas (Bacoor). All the inhabitants of these barrios were taken to a grove near the seashore. They cannot leave there. It is said that the villagers are forbidden to aid the reconcentrados; and so it is that they have no other roof to cover them than the sky, and they are exposed to heat of the sun and the night dew.

Among the reconcentrados there are many women and children, many mothers with children at the breast, and what is even more pitiable, there are many who have nothing to eat.

Often when the pueblo people who feel sorry for them ask them to visit them, they can only reply:

"Don't insist; you might become mixed up with us."

These replies speak loudly; and seem to be the cries of people who have lost all hope."

and a translation of the said publication in the Tagalog language into Spanish is as follows:

That the said newspaper "El Renacimiento" and the said issue of the 7th day of June, 1905, had, as the defendant well knew, a large circulation in the city of Manila and throughout the provinces
241 of the Philippine Islands where both the Spanish Language and the Tagalog dialect and language are read and spoken and particularly in the provinces of Cavite and Batangas and said pueblo of Bacoor where the said David J. Baker, Jr. is stationed and where he was at the time of said publication and had been for a long time prior thereto and still is in command of and chief of the Philippines Constabulary for a district comprising the provinces of Cavite, Batangas, Laguna and Rizal, Island of Luzon; that a large number of the Filipino people and the subscribers and readers of the said newspaper "El Renacimiento" living in said provinces and in said pueblo of Bacoor who are unable to either speak or read the Spanish language do speak and read the Tagalog language and dialect; and that the publication of the article aforesaid in both the Spanish language and the Tagalog language and dialect had the effect, and was done with the purpose on the part of the defendants, of giving the said defamation and libel the widest possible circulation; publication and publicity and of doing the greatest injury possible to the said David J. Baker, Jr., and that for the purpose of insuring the said libelous article to be read by all the subscribers and readers of the said newspaper "El Renacimiento", the said defend-

ants placed and caused to be placed, published, and printed on the front page of the Spanish portion of the said issue of the 7th of June, 1905, containing the said defamation and libel, the following notice enclosed in heavy leaded lines in large type in a conspicuous place on the front page of said paper:

"Read on the second page today the reconcentration in
242 Bacoor which brings interesting information from that locality,"

and placed printed, published, and caused to be placed, printed, and published the said defamation and libel on the most conspicuous portion of the front page of the Tagalog portion of said issue; that the said David J. Baker, Jr. was at the time of the publication of the defamation and libel aforesaid in command of and Chief of the Philippines Constabulary at Bacoor with the rank of Colonel and responsible for the discipline, conduct, and behavior of the Philippines Constabulary in said pueblo and in the provinces of Cavite and Batangas and for the peace and security of the community and the people and property therein, and was well known by the officers of the United States army and the Philippines Constabulary, by the officials of the Government of the Philippine Islands, and by the inhabitants of the pueblo of Bacoor and the province of Cavite and the public generally to hold such position, and the said defamation and libel and the words and terms "Chief of Constabulary," inexorable Chief," as used in the Spanish publication of the said defamation and libel, and the words and terms "Colonel Baker," "Baker," and "Constabulary Officer," as used in the Tagalog publication of the said defamation and libel, were all intended by the said defendants to refer to and mean the said David J. Baker, Jr. and would be understood and were understood by the officers of the United States army in the Philippine Islands, the officials of the Government of the Philippine Islands, the Constabulary of the Philippine Islands, the inhabitants of the pueblo of Bacoor and the province of Cavite, and the subscribers and readers of
243 the said newspaper "El Renacimiento" and the public generally, to refer to and mean David J. Baker, Jr., that the said defendants by said defamation and libel intended to and did charge the said David J. Baker, Jr. with having committed and with having caused and permitted others of the Philippines Constabulary under his command to commit unspeakable abuses, vexations and outrages upon the peaceable inhabitants of Bacoor and the provinces of Cavite and Batangas, of having penned up and kept imprisoned on a small piece of land without permitting them sufficient food or proper shelter, the inhabitants—men, women, and children—of the barrios of Ligas and San Nicolas, and of having kept them there in a starving, insanitary condition, not permitting them to leave the piece of ground in question, subjecting them to rigorous surveillance, requiring them to attend roll call, and confining them in a dungeon, and maltreating them if they absented themselves from the said piece of land in question; persecuting the peaceable citizens of the pueblo of Bacoor and of Cavite and Batangas provinces and

required and compelled them to take to the field to capture bandits, and of having locked up such persons in a foul dungeon if they returned from the field without having captured any bandits; of having violated his, the said David J. Baker, Jr.'s, solemn obligation, promise, and agreement to and with one Felix Cuenca and imprisoned him, the said Felix Cuenca, without cause or justification, in a dungeon, of having arbitrarily demanded and requested Mr. Nicolas Gonzales to go out in pursuit of bandits, and of having on the refusal of said Nicolas Ganzales to go out in the field to pursue bandits as requested then and there struck the said Nicolas Gonzales a violent resounding blow, tying him elbow to elbow and con-
244 ducting him to a dungeon and confining him therein without authority, cause, justification, or provocation; of having kept and maintained a foul dungeon and an unclean, insanitary prison, and of having confined prisoners therein amidst putrefying rubbish and human excrement and other foul and noisome materials and without sufficient or proper food, and not permitting or allowing them to be fed by their relatives, without authority, cause, provocation, or justification, and of having caused, countenanced, and permitted all of the aforesaid things to be done by others under his authority and command, and with his full knowledge, consent, and approval; and the said defamation and libel aforesaid would be understood by the officers of the United States army, the officials of the Government of the Philippine Islands, the officers of the Constabulary, the inhabitants of the Philippine Islands in general and particularly the inhabitants of the provinces of Batangas and Cavite and the pueblo of Bacoor aforesaid, to charge the conduct, and things aforesaid of and against the said David J. Baker, Jr. all of which conduct and things above set forth were and are false and without foundation in fact; that in truth and in fact, the inhabitants of the said barrios of Ligas and San Nicolas were not confined, restricted, and imprisoned by the said David J. Baker, Jr. nor anyone else on a small piece of land belonging to a private party on the seashore without proper food and shelter and under rigorous surveillance, but were free to go anywhere in the poblacion of Bacoor except the barrio of Ligas; that the said barrio of Ligas is distant from the main pueblo of Bacoor and it was and is impossible
245 to furnish adequate police surveillance to the inhabitatnts of said pueblo from certain bands of outlaws or robbers operating in the locality; that the said inhabitants were removed from the barrio of Ligas to prevent them contributing through fear of violence and outrage to these bands of robbers and bandits and to protect them from pillage, outrage, and extortions at the hands of such bands, and said inhabitants were not removed until after a defenceless resident of said barrio had been murdered by said bandits; that in truth and in fact the inhabitants of said barrio were allowed, permitted, and advised to bring in all their food, household effects, and even their houses if they so desired, and were provided with material with which to construct other houses on land adjacent to the pueblo of Bacoor if they so desired, and were and are permitted to sleep and lodge in any part of the pueblo of Bacoor except the

barrio of Ligas and had sufficient and proper food and shelter, and in truth and in fact the inhabitants of said pueblo were not only permitted to administer to the necessities of these people by the said David J. Baker, Jr., but were permitted to and did actually raise a voluntary contribution with the full knowledge and consent of the said David J. Baker, Jr. to buy food and clothing for surrendered bandits; that in truth and in fact peaceable citizens were not required by the said David J. Baker, Jr. nor by anyone else with his knowledge and consent to take to the field to capture ladrones or bandits nor were such peaceable citizens imprisoned if they failed or refused to capture such ladrones or bandits; that in truth and in fact the said Nicolas Gonzales was not asked, requested, required, nor demanded by the said David J. Baker to go out in pursuit of
246 bandits nor was he struck and tied elbow to elbow by the said David J. Baker, Jr. nor by anyone else, nor was the said Nicolas Gonzales imprisoned by the said David J. Baker or anyone else because of his refusal to go out in pursuit of bandits; that in truth and in fact the said David J. Baker, Jr. neither violated his word, promise, or obligation to the said Felix Cuenca nor imprisoned him, the said Felix Cuenca for the reasons alleged in said defamation and libel; that in truth and in fact the said David J. Baker, Jr. has not maintained nor permitted to be maintained in the pueblo of Bacoor or within his jurisdiction a dungeon for the confinement of prisoners and has not confined any prisoners in a dungeon nor permitted them to be so confined nor has he maintained a hog-cell prison filled with putrefying rubbish, human excrement, and other materials, nor has he confined persons in such prisons nor has he refused or failed to furnish proper and sufficient food for prisoners or refused or failed to allow prisoners to be fed by their relatives, nor has he permitted any of these things to be done; but, on the contrary, he has furnished each prisoner with the regular rations of a constabulary soldier and has permitted the relatives and friends of the prisoners to bring such food to the prisoners confined at Bacoor as they desired; that the said defamation and libel was published by the defendants as aforesaid willfully and maliciously and every effort was made on the part of the defendants and each of them to secure and insure that the said libel be read by all the subscribers and readers of the said newspaper "El Renacimiento" and to give
247 the said defamation and libel the widest publicity possible;

All contrary to the statute in such cases made and provided.

(Sgd.) DAVID J. BAKER, Jr.

Subscribed and sworn to before me and in my presence in the City Manila, P. I., this 23rd day of June, 1905, by the said David J. Baker.

(Sgd.) JOHN C. SWENEY.

Witnesses	Addresses.
David J. Baker, Jr.,	Chief of Constabulary, Bacoor, P. I.
Lieutenant Charles J. McCoy,	" "
Gregorio de Gio,	" "
Epifanio Gomez,	" "
Elias Ginto,	" "
Carl B. Hard,	Secret Service Bureau.
Elias Cromwell,	Deputy City Assessor and Collector.

248 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila, Part I.

Cause No. 2215.

THE UNITED STATES
versus
MARTIN OCAMPO.

Separate Trial. Libel.

Judgment.

The defendants, Fernando M. Guerrero, Lope K. Santos and Martin Ocampo, were charged with the crime of libel by David P. Baker, Jr., Colonel, Philippines Constabulary. Martin Ocampo was tried separately from the other two. The evidence introduced at the trial has produced the same result as the evidence introduced at the trial of the case against the other two defendants.

The basis of the complaint is that the defendant Martin Ocampo, as well as the other two accused, was editor, director and business manager of the newspapers "El Renacimiento" and "Mulig Pagsilag," wherein the alleged libelous article was published.

The publication was made in the form of two articles which were printed in the said newspapers, "El Renacimiento" and "Mulig Pagsilag," both of which are edited in this city by the same publishing company, on the 7th of June of the year last past, in which said articles reference was made to the reconcentration of
249 the residence of the barrios of Ligas and San Nicolas of the town of Bacoor, Province of Cavite; the manner in which the said reconcentration was accomplished; the situation and condition to which the persons reconcentrated were subjected; the detention of some of the residents of the town of Bacoor, including some prominent citizens and other persons from the barrios of Ligas and San Nicolas, upon whom the Constabulary authorities had called to help them bring in bandits; to certain things done, according to the said articles, to a man named Felix Cuenca and another party by the name of Nicolas Gonzalez; and generally, it was stated in the said articles that at that time in the town of Bacoor all kinds of outrages and undescribable abuses were committed, all of which

served as the prologue to an article published in "El Renacimiento" entitled, "The Reconcentration of Bacoor—Situation Very Grave."

Act No. 277, which defines and penalizes the crime of libel, establishes as a presumption that every injurious publication was made maliciously unless justifiable motives are shown, but gives to those who made the publication, alleged to be libelous, the right to prove the truth of the acts charged in the publication, and if what is alleged to be libelous is found to be true and that the publication was made with good intention and justifiable motives, then according to section 4 of the same Act, the parties responsible for the publication should be acquitted.

The evidence as to the truth of the alleged libelous mat-
250 ter may be offered by the accused not only for the purpose of showing that the facts actually existed but in order that from the result of such evidence the court may infer the intention of the defendant, the nature of the publication and consequently whether or not the same was made maliciously and with the intention of injuring, dishonoring, or discrediting the person to whom the same is alleged to allude.

Upon the separate trial of the defendant Martin Ocampo such evidence was introduced and, as it has been said before, it had the same result as the evidence introduced upon the trial of the other two defendants, Fernando M. Guerrero and Lope K. Santos.

This court tried the other two defendants separately, assisted by two different assessors in each case, has rendered its decision and verdict in each of them, and will, therefore, refer in this case to the decisions in the other two, particularly in view of the fact that, with very few exceptions, the same witnesses who testified upon the trial of the defendants Guerrero and Santos also testified on the trial of this defendant.

There may be certain minor discrepancies between the testimony of the witnesses who testified in this case and those who testified in the other cases, but such discrepancy cannot in the least affect the essence of the testimony, the truth of the matter, and the main facts to which said testimony relates; and it may be said
251 that upon the trial of this defendant, and with reference to some of the statements contained in the publication in question, additional evidence has been introduced which goes to corroborate the truth of the facts testified to by the witnesses upon the trial of Guerrero and Santos.

The circumstances under which the reconcentration was effected, giving the residents of San Nicolas and Ligas a comparatively short time within which they could conveniently settle upon the place designated for the people of the said barrios of the town of Bacoor, respectively, all of which has been satisfactorily established upon the trial of this defendant, as well as upon the trial of the other two accused; the lack of conveniences of any sort at either of the two places, at each of which, as the proof shows, a wooden sign, with the following inscription, was posted: "Sitio de los reconcentrados de Ligas" and "Sitio de los reconcentrados de San Nicolas" ("Reconcentration site for the people of Ligas" and "Reconcentration site for the people

of San Nicolas"), demonstrates that at least those who arrived at the said sites during the first days of the reconcentration, slept, as alleged in the articles claimed to be libelous, upon the bare ground under the trees or bamboo canes growing there, because it is impossible to conceive that such a large number of people as congregated there during the first days, and who had to live within the limits fixed by the authorities, there being but one house within the said limits, were not compelled to spend the first two nights in the manner
252 stated in the aforesaid articles.

There is no evidence whatever that the persons detained at the reconcentration camp were permitted to live in the houses of the other residents of the town of Bacoor during the first two days or at any time thereafter. It has been said by the witnesses for the defence that they were prohibited to leave the reconcentration camp under penalty of fine and imprisonment, and if the allegations of the prosecution to the contrary were true, it would have been very easy for the government to bring here as witnesses hundreds of residents of the town of Bacoor to prove that they had sheltered some of the persons thus detained, in their own houses in the town. But the prosecution has failed to present such witnesses and this is sufficient in itself to demonstrate that the residents of those barrios were detained within the limits of the camps designated by Colonel Baker within the town of Bacoor, to remain there as long as the reconcentration lasted.

It has also been said by the witnesses for the defence that a roll was kept of all people in the camp. Upon the trial of the other two defendants there was introduced in evidence a list of some sixty or seventy names, the heads of the various families detained at the camp, and the purpose of the reconcentration being to avoid that the people thus detained should communicate with the followers of Felizardo or the members of his band, or that they might be made the victims of their depredations, it will be readily observed that
253 the measures adopted by Colonel Baker with relation to the people thus reconcentrated were so adopted in pursuance to a preconceived plan, the principal object of which was to prevent the people from leaving the places designated or at least to avoid their wandering too far off. Furthermore, the very fact that a particular place was designated for the people thus detained when, as a matter of fact, they might have been permitted to live in the town of Bacoor without designating any particular place, shows the intention that they should not leave the camp, and this fact tends to confirm the testimony of the witnesses to this effect.

The court refers entirely to the result of the evidence adduced upon the trial of the cause against Guerrero and Santos and now reiterates its opinion, formerly expressed, as to the result of said evidence, the court being of the opinion that the truth of the allegations contained in both articles has been established in so far as they relate to the reconcentration, the manner in which the same was conducted, and the condition and situation of the people detained.

As to the aid requested of the Constabulary from various prominent citizens of Bacoor, San Nicolas and Ligas, in the search for and

capture of malefactors and brigands, and the detention of many of them in the calaboose or jail on the ground floor of the convent, all these allegations have also been established at the trial. The detention of these people took place after some of them had gone out in search of malefactors, going for this purpose to the barrio of
254 Mambug; after they had returned from the said place, having failed to secure the capture or surrender of some of the men under Damaso Marquez, one of the chiefs of Felizardo's band, and even after the surrender of Marquez himself. These detentions took place after the parties themselves had been notified by Lieutenant Ramos that they should render to the Constabulary all possible aid and assistance, a suggestion which was also made to them by Colonel Baker and by Captain Baker himself. If these detentions were made after such suggestion; if these detentions were made after the persons detained had rendered the assistance required of them and because they had failed to satisfy the wishes of Colonel Baker and the officers of the Constabulary, there is no doubt that such detentions were in the nature of a punishment inflicted upon those who went out in search of brigands and failed to carry out their purpose in a manner satisfactory to the Constabulary, and it cannot be denied that the citizens were compelled to go out in search of brigands or to induce them to surrender.

Some of them were detained on the ground floor of the convent in a place which "El Renacimiento" calls "filthy" and "Mulig Pagsilag" a pigs' pen. There is also evidence tending to show that the persons detained, some of whom were prominent citizens of the town of Bacoor and who were accustomed to live with relative comfort in their own homes, were not even furnished with a bamboo bedstead or any other platform upon which to sleep during
255 the nights spent by them in confinement. True, there was some straw on the floor but it smelt bad, like horse urine, according to some of the witnesses; many of them testified that they had slept upon the tiles, upon the tiled floor of the jail, upon sacks made out of a thick material, and this certainly justifies the designation of "filthy" given to the condition of the jail, and the prisoners unquestionably had the right to call it so.

The designation of the jail as a "pigs' pen" is rather exaggerated but this does not detract from the truth inherent in the fact itself, because it was substantially true that the jail was not conveniently arranged for the detention of those people for the length of time they were held in confinement.

The food undoubtedly was not at all agreeable to the persons detained because there is no doubt that at least the prominent citizens of Bacoor, the lieutenants of the barrios and the councilmen of San Nicolas, Valentin Yepes and Justo Narvaez, and others of Membug, did not eat or were not accustomed to eat tiny little fish every day at home. The native of the Philippine Islands, even in the smallest town, keeps in his back-yard a few chickens to eat on some days of the week, and if he is compelled to eat every day these tiny little fish and nothing else, he will consider it as a prohibition in the nature of a punishment.

This is the reason why "Mulig Pagsilag," without saying that the food was bad, remarks: "But what a Food!" thus intimating that the persons detained were not accustomed to eat that kind of food.

256

The salient feature of these detentions was the arrest of Felix Cuenca, the most prominent citizen of Bacoor, the first among his fellow-townsmen, the one referred to in the two articles, the one who had already rendered his services to the cause of public order in Cavite, the one who assisted Epifanio Gomez in securing the surrender of Cesario Parrales and twenty-one members of his band, the one who, after having rendered such services, while detained in jail by order of Colonel Baker, was again called to Mambug and directed to secure also the surrender of Damaso Marquez, and after having secured the same was again thrown into jail because it was suspected that it was due to him that the members of the band of Damaso Marquez had refused to surrender, and this man, Felix Cuenca, continued in confinement, was subsequently sent to the provincial jail of Cavite, and was about to be prosecuted for brigandage, which, however, was not done, this being the best evidence of the fact that there was really no ground for the detention of this old man.

It is not necessary to mention the details of similar detentions and arrests made by the Constabulary forces at Bacoor. The consummated facts are the best evidence of the truth.

257

With reference to the case of Nicolas Gonzalez, as to which the version given in the two articles alleged to be libelous differs in details but not in substance, this court has in its decision in the case of Fernando M. Guerrero and Lope K. Santos determined the interpretation which should be given to the words "Constabulary Chief" which appear in the article published in "El Renacimiento' and to the words "Officers" or "Constabulary Chiefs" used in the article published in "Mulig Pagsilag."

Colonel Baker cannot and should not consider himself alluded to in the two articles in question, which simply refer to the case of Gonzalez. He is not necessarily the only chief of the Constabulary referred to in the said articles; he was not the only Constabulary chief at that time in Bacoor, but he was the only chief of the Constabulary or of the constables and is referred to as such in the article in question in connection with Cuenca. Captain Baker might have been considered also at that time as a chief of the Constabulary at Bacoor for the reason that on the 11th of May and before the headquarters of the Constabulary were established at said town, there was a detachment of the same organization stationed in the same town. Lieutenant Ramos also might have been a Constabulary chief if he had been in command of any forces or station. And it may be said that the residents of Bacoor actually considered Lieutenant Ramos as much a chief of the Constabulary as Colonel Baker or Captain Baker, considering the way he acted in that town.

258

If in this part of the article reference had been made to all the Constabulary chiefs, then Colonel Baker could justly consider himself alluded to, because among them he was the ranking

chief. The article simply says "Constabulary Chief." No particular reference is made as to who the chief was, no particular person is mentioned in connection with the Gonzalez case. It is evident that Colonel Baker could not have been charged with the acts of violence which in the said article are claimed to have been perpetrated upon the person of Gonzalez. "Constabulary Officers" or "Constabulary Chiefs" is the only possible English version, as it was urged at the trial, of the words "manga pinunung constabularios," but, however it may be, no reference having been made to all the Constabulary officials or to all the Constabulary chiefs, Colonel Baker cannot consider himself aggrieved, for the reason that we do not know who those chiefs or officers are and we cannot infer anything definite from something which is uncertain.

Nor can Colonel Baker consider himself alluded to in the articles in question in so far as they relate to Gonzalez simply because he was the ranking chief of the Constabulary at Bacoor on that occasion, the chief of the provisional district which included the Provinces of Laguna, Batangas and Cavite, and the one therefore responsible for the good discipline and behavior of his subordinates. The acts referred to in said articles, as has been shown by the prosecution itself during the trial, are acts which are purely personal and private in their nature and in no sense public
259 or official acts. It follows therefore, that Colonel Baker cannot be held responsible for acts of a private nature committed by his subordinates. It must necessarily be so considered if there is any logic in the reasoning of the prosecution.

Therefore, Colonel Baker had no right to file a complaint against the defendant in this case on account of that part of the two articles under consideration for the reason that he was not the person referred to and could not consider himself defamed or otherwise injured by the publication.

The court in this case considers that abundant evidence has been adduced as to the truth of the allegations contained in the two articles in question with the exception of that part thereof which relates to the case of Nicolas Gonzalez, concerning which the court will confine itself to what has been heretofore stated. Two different versions of the case were presented at the trial. But be it as it may, it should also be considered that it is an established fact that Nicolas Gonzalez was the subject of some violence on the part of the Constabulary on that occasion. He was confined in jail and at the other trial, as well as upon the trial of this case, evidence has been adduced tending to show that while in jail he was fastened with handcuffs.

Therefore, it is substantially true that the said Gonzalez was placed under arrest and that while in jail he was upbraided by Lieutenant Ramos. This latter fact was established at the
260 other trial and there is some evidence in the case to support the charge. In any event, even though the charge had not been proved, Colonel Baker not being the person referred to in that part of the two articles in question, the complaint as to this particular allegation cannot be sustained.

There was good intention, justifiable motives and justifiable ends in the publication of the two articles in the newspapers "El Renacimiento" and "Mulig Pagsilag" as heretofore decided by this court upon the other branch of the case. The court reiterates here the reasoning upon which its former decision is based. It is evident that the purpose of "El Renacimiento" and "Mulig Pagsilag" was to free the reconcentrated people of San Nicolas and Ligas, as well as the residents of the town of Bacoor, of the humiliation to which they were subjected by Lieutenant Ramos and the abuses which were being committed at that time as a result of the reconcentration and of the abnormal situation in which those towns were, as well as the entire Province of Cavite.

It is not necessary to analyze or set out the contents of each of the articles published in "El Renacimiento" and "Mulig Pagsilag" in other issues of the same papers introduced in evidence by the prosecution for the purpose of showing that the two articles in question had been published in pursuance to a deliberate plan adopted by "El Renacimiento" and "Mulig Pagsilag" against the work
261 of the government in these Islands, the pacification of the country and the persecution of the brigands, because such an assertion on the part of the prosecution might be contradicted by the production of other articles published in other issues of "El Renacimiento" and introduced in evidence by the defendants, which said articles tend to show that the only object of the paper was to set forth the real facts as to the situation in the Province of Cavite, as well as in the town of Bacoor, and the adjoining provinces of Batangas and Laguna, at a time when brigandage existed in those provinces, in order to avoid that the evil should attain greater proportions and also prevent the spread of brigandage, hearing for this purpose the opinion of all those who were willing to render their assistance and answer the various questions propounded by the paper.

It required a very clear and strong evidence to overcome not only the presumption of good faith and good motives on the part of the newspapers "El Renacimiento" and "Mulig Pagsilag" in publishing the said articles, but to demonstrate that they were actuated by motives different from those which actually actuate every Filipino who has the welfare of his country at heart. All Filipinos are equally interested that peace exist in the country and that brigandage disappear for if brigandage can do any harm at all, if it can injure anyone, it would be, primarily, the Filipinos themselves who compose the great mass of the people and own property in the very provinces which are infected by the evil. For this reason neither Colonel Baker nor any other member of the Constabulary
262 should have doubted the loyalty of Felix Cuenca and of the other residents and prominent citizens of Bacoor who personally assisted in the suppression of brigandage. If they did not do all that they could do or should have done, according to Colonel Baker and the members of the Constabulary stationed in the town of Bacoor at that time, this is no reason why they should be branded as disloyal, traitors and guilty. They did all they could do and certainly did enough when they ventured to incur the hatred of Feliz-

ardo and Montalon and the members of their bands, risking their property and life by going out into the fields to meet and talk to these malefactors in order to induce them to surrender, and incidentally taking the chance of having to fight with them. This is the reason why the court gives full credit to the testimony of these witnesses notwithstanding the allegation of the prosecution that they were enemies of Colonel Baker, being, as they were, the friends and fellow-townsmen of Felizardo. The court, therefore, considers the testimony given by these witnesses as absolutely worthy of credit.

They would not have come here and testified in the manner in which they did unless everything they said was true. When they testified in this case the reconcentration still existed at Bacoor and the writ of habeas corpus had been suspended, and they could have been arrested by the Constabulary upon their return and then they would have been exposed to the threats of Felizardo on one side and the Constabulary on the other. When they ventured to tes-
263 tify in this case in the manner in which they did, we must necessarily admit that they had the necessary courage to tell the whole truth and face the consequences. Pedro Melinis, one of the principal residents of Bacoor, who had also been arrested, when testifying upon the witness stand as a witness for the defence, expressed his fear to return to Bacoor, because, as he said, the writ of habeas corpus having been suspended he might again be arrested. Finally, in order to judge of the credibility of these witnesses, we must bear in mind that almost all of them had to return to Bacoor after they had testified in this case in the presence of several officers of the Constabulary who were present at the trial and who could have contradicted their testimony.

The suspension of the writ of habeas corpus did not authorize Colonel Baker to make some of the arrests he made in the manner in which they were made by Lieutenant Ramos and in some cases for the reasons for which they were made. In its former decision this court discussed at length the meaning and scope that should be assigned to Executive Order No. 6 issued January 31, 1905, suspending the writ of habeas corpus, and for this reason believes it unnecessary to repeat here what has been said before.

The truth of the matter contained in the publication in question having been substantially established and there having been shown good intention and justifiable motives on the part of "El Renacimiento" and "Mulig Pagsilag", even though the defendant Martin Ocampo be considered among the editors and direcors of the
264 said publications, he cannot be found guilty of the crime of libel charged in the complaint.

But, even assuming that no such proof had been adduced, the court finds that Martin Ocampo has established upon the trial of this case that he was only the business manager of the publishing company which published both "El Renacimiento,, and "Mulig Pagsilag". This consideration would have relieved the court of the necessity of discussing the evidence and expressing its opinion as to the result of the same. But in view of the fact that the assessors in this case were not the same as those who sat upon the trial of the

defendants Lope K. Santos and Fernando M. Guerrero, the court has deemed it advisable to restate the facts for the reason that the various questions of fact raised, including the character and nature of the office of Martin Ocampo in the newspapers in question, were submitted to the consideration of the assessors, whose opinions upon the subject have been taken into account by the court.

The law of libel holds responsible for any publication alleged to be libelous, the editors, authors, or proprietors of the same, but says nothing about the business managers. The editor, author or reporter is the person responsible for the publication. Under the old Spanish legislation every newspaper enterprise had, aside from the editorial and administrative staffs, a person who was known as the "responsible editor". He was responsible for any article published in the paper. The writers or authors of the articles were not
265 always responsible. This was due to the fact that there existed what was known as official censorship. There was no freedom of the press. It was, therefore, necessary that when an infraction of the law was committed there be some one who could be held responsible for the publication. The responsible editor was, as a rule, a man hired by the owners of the paper and his services as such responsible editor were exploited in a manner somewhat improper because he only served to shield the real violators of the law, that is to say, the authors of the publication. And the responsible editor, in consideration of the money which he received for his services, would suffer the punishment which the law meant to inflict upon the real offenders. The responsible editors were subsequently done away with because the law should not punish anyone except those who were really guilty. The author of the article and, in his absence, the editor or director of the newspaper in which the article was published were held responsible for the publication. Therefore, the true spirit of the law is and should be in the case of journalistic enterprises and publications that the person who drafted the article and wrote the same be held responsible for its publication.

To hold otherwise would be equivalent to returning to those times when there existed in such enterprises the so-called responsible editors, more or less liberally paid, who in such an im-
266 moral and miserable manner assumed all the responsibility for the offenses committed by the true authors of the crime. This is exactly what would happen in this case if, according to the theory of the prosecution, the defendant Martin Ocampo who was simply the business manager of the newspapers "El Renacimiento" and "Mulig Pagsilag," and who has been described as an editor of the paper by the prosecution, were held responsible for the publication of the two articles alleged to be libelous. The defendants Fernando M. Guerrero and Lope K. Santos clearly testified at the trial that they were the authors of the two articles in question, republishers of "Rosenstock's Manila City Directory," upon information given by one Eusebio Daluz, whom they believed in good faith, and that they assumed all responsibility for the said publication; that they were the editor and director, respectively, of the newspapers "El Renacimiento" and "Mulig Pagsilag;" that the editorial and

administrative divisions of the papers were independent and separate from each other, and acted with a certain autonomy in conducting the enterprise. To the same effect was the testimony of Andres Rivero, Peretuo Romero, Pedro Aunario, and Narciso Rangel, all of whom were perfectly informed of the manner in which the enterprise was conducted. The defendant Martin Ocampo was only concerned with the administrative and business management of the paper, took charge of all accounts, accepted subscriptions to the paper and business advertisements, but had nothing to do with
the preparation of the articles and never read or examined
267 them, nor were such articles submitted for his approval before
publication. This was also testified to by the same witnesses.

True, that in a directory published in this city, known as the "Rosenstock Manila City Directory," there appears in a long list of residents of this city showing the business, occupation and residence of each one of them, the name of Martin Ocampo, the defendant in this case, who is described as follows: "Ocampo, Martin, Editor of 'El Renacimiento,' 79 Elizondo." But the same directory publishes an advertisement which is an exact copy of the advertisement published by the newspaper "El Renacimiento" itself in some of the pages of its daily issues, wherein it is said: "All correspondence should be addressed to Martin Ocampo, the Business Manager." The list in question is a list which was prepared by the publishers of "Rosenstock's Manila City Directory," upon information secured by the publishers of said directory from what they have heard, from what they have been told. The advertisement is an exact copy of that which appears in the newspaper itself. Therefore, the former cannot be considered a better proof than the latter, particularly in view of the fact that the latter is in conformity and agrees with the testimony of the witnesses who testified upon the trial.

True, that the prosecution has introduced in evidence two receipts for subscriptions to the said paper signed by the defendant Martin Ocampo, one of them in favor of Leopoldo Novales and the other in favor of the Prosecuting Attorney himself, in which the word "editor" appears below the signature of Martin Ocampo.
From this the court is asked to infer that Martin Ocampo is
268 actually the editor of the newspapers "El Renacimiento" and
"Mulig Pagsilag." Such proof is very weak to base on it any of such conclusion. In the first place, because the receipts in question were printed receipts intended for the signature of the editor and it may be that the business manager signed them in the absence of the editor and for the editor, and in the second place, the business manager might have signed in behalf of the editor of the paper the receipts which were sent out for the purpose of collecting the monthly dues for the subscriptions to the paper, leaving the word editor unerased and failing to state thereon that he was the business manager. But he did not, for this reason, cease to be the business manager or become the editor of the paper.

The true nature of the duties of the office held by Martin Ocampo is to be determined by reference to the functions which he per-

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formed as an employee of the enterprise. Those functions, as has been shown, were of a strictly economic and administrative nature. Being as he was merely the business manager of the newspapers "El Renacimiento" and "Mulig Pagsilag," he cannot be held responsible for the violation of the law which, according to the prosecution, was committed by means of the publication of the two articles in question. The prosecution should have endeavored to lodge the responsibility with those who wrote the articles, with the authors and editors of the publication, to-wit, Fernando M. Guerrero and Lope K. Santos, who were acquitted upon the former trial.

The court, therefore, acquits the defendant Martin Ocampo with the costs of proceedings de oficio, and hereby directs that the
269 bond given by the accused be discharged and the defendant set at liberty.

It is so ordered.

Manila, March 13, 1906.

(S'g'd) MANUEL ARAULLO, *Judge.*

I certify that the foregoing is a true and correct copy of the original on file with case No. 2215, entitled The United States vs. Martin Ocampo, et al., for libel.

Manila, November 30, 1908.

[Seal of the Court of First Instance of Manila.]

(S'g'd) C. A. SOBRAL,
Assistant Clerk.

I hereby certify that the foregoing 269 pages of typewritten matter contain a true and correct transcript and translation of the record of the proceedings had in the Court of First Instance of Manila, upon the separate trial of the defendant Martin Ocampo in the above entitled cause.

In witness whereof I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands, this 23rd day of June, 1911.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk, Supreme Court, P. I.

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a THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Supreme Court File No. 5527.

THE UNITED STATES, Plaintiff and Appellee,
versus
MARTIN OCAMPO et al., Defendants; MARTIN OCAMPO, TEODORO M. KALAW, and FIDEL A. REYES, Appellants.

For Libel.

Separate Trial of Teodoro M. Kalaw.

Certified Copy of Proceedings Had in the Court of First Instance for the City of Manila in the Above-entitled Cause.

1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Information: Libel.

The undersigned accuses Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar of the crime of Libel, committed as follows:

That on or about the 30th day of October, 1908, the said Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, and each of them, were the editors, proprietors, owners, directors, writers, managers, administrators, printers and publishers, in the City of Manila, Philippine Islands, of a certain daily newspaper, known as "El Renacimiento"; that said newspaper was, on and about the 30th day of October, 1908, printed, edited, published and circulated daily by said defendants and each of them, in both the Spanish and Tagalog languages in the City of Manila, Philippine Islands; that on and about the 30th day of October, 1908, in the City of Manila, Philippine Islands, the said Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, and each of them, as editors, proprietors, owners, directors, administrators, writers, managers, printers and publishers of said newspaper, "El Renacimiento", in the City of Manila, Philip-
2 pine Islands, did then and there wilfully, unlawfully, feloniously, and with malicious intent to injure one Dean C.

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Worcester, who was at that said time, and still is, a member of the Philippine Commission, and Secretary of the Interior of the Philippine Islands, and with the malicious intent to impeach the honesty, virtue and reputation of the said Dean C. Worcester, both as a man and as an official of the Government of the Philippine Islands, and to expose the said Dean C. Worcester to public hatred, contempt and ridicule, write, edit, print, publish and circulate, and cause to be written, edited, printed, published and circulated in a regular daily issue of said newspaper, "El Renacimiento", of the date of October 30th, 1908, of and concerning the said Dean C. Worcester, a certain false, injurious and malicious defamation and libel, tending to impeach the honesty, virtue and reputation of the said Dean C. Worcester, and expose him, the said Dean C. Worcester, to public hatred, contempt and ridicule; that the said libel was printed, published and circulated in the Spanish language was as follows:

"MANILA, 30 *de Octubre de* 1908.

Editorial.

Aves de Rapiña.

En la extensión del globo, unos han nacido para comer y devorar, otros para ser comidos y devorados.

Una y otra vez, estos últimos se han agitado, tratando de rebelarse contra un orden de cosas en que son presa y pasto para la verocidad insaciable de los primeros. Alguna vez han tenido suerte ahuyentando lejos á los comedores y devoradores, pero en la mayor parte de las veces no se ha conseguido más que un cambio de nombre ó de plumaje.

En todas las esferas de la creación, la situación es la misma, la relación entre unos y otros es la que dictan el apetitoy la fuerza para saciarlo á costa del prójimo.

Entre los hombres, es facilisimo observar el desarrollo de este fenómeno diario. Y por alguna razon psicológica los pueblos que se creen poderosos han tomado por emblema las criaturas más fieras y más dañinas: ora es el leon, ora el águila ó la serpiente. Unos lo han hecho por un secreto, impulso de afinidad, otros por efecto de una simulación, de vanidades infatuadas aparentando lo que no son ni pueden ser jamás.

El águila, simbolizando libertad y fuerza, es el ave que ha encontrado más adeptos. Y los hombres, colectiva é individualmente han querido copiar é imitar al ave más rapaz, para triunfar en el saqueo de sus semejantes.

Hay hombres que, ademas de ser águilas, reunen en si las caracteristicas del buitre, del buho y del vámpiro.

Subiendo á las montañas de Benguet para clasificar y medir cráneos de igorrotes y estudiarlos y civilizarlos y sorprender al vuelo, con ojo de ave de rapiña, donde se encuentran los grandes yacimientos del oro, la presa oculta entre los montes solitarious, para apropriárselos después gracias á facilidades legales hechas y deshechas al antojo, pero siempre en beneficio propio.

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Autorizando á despecho de leyes y ordenanzas una matanza ilegal de ganado enfermo, para sacar beneficio de la carne infecta y podrida que el mismo estaba obligado á condenar en virtud de su posición oficial.

Presentándose en todas las ocasiones con el ceño fruncido del sabio que consume su vida en los misterios del laboratorio de ciencia, cuando toda su labor cientifica se reduce á desecar insectos é importar huevas de peces como si los peces de este país fueran menos nutritivos y menos ricos, de tal modo que valiera la pena de sustituirlos con especies venidas de otros climas.

Dan un impulso admirable al descubrimiento de veneros de riqueza en Mindoro, en Mindanaw y demás puntos vírgenes del Archipiélago con el dinero del pueblo y con el pretexto de bien publico, cuando en rigor se trata de poseer todos los datos y la clave de la riqueza nacional en provecho personalísimo como se demuestra por la adquisición de inmensas propiedades registradas con nombres ajenos.

Promoviendo por medio de agentes y consocios secretos la venta á la ciudad de terrenos sin valor por cantidades fabulosas que los padres de la ciudad no se atreven á rehusar por el temor de disgustar á quien va detrás de la moción, y que no rehusan por lo que les conviene.

Patrocinando la concesión de hoteles en sitios terraplenados con la perspectiva de enormes utilidades, á expensas de la sangre del pais.

Tales son las caracteristicas del hombre que es á la vez águila que sorprende y devora, buitre que se solaza en las carnes muertas y putrefactas, buho que aparenta una omnisciencia petulante y vámpiro que chupa en silencio la sangre de la víctima hasta dejarle exangue.

Estas aves de rapiña son las que triunfan. Su vuelo y su dirección
jamás se ven detenidos.
4 Quien los detrendrá?

Unos participan del botin y del saqueo. Otros son tan débiles para levantar la voz de protesta. Y otros mueren en la desconsoladora destrucción de sus propias energias é intereses.

Y entonces surge, terrorifica, la leyenda inmortal:

Mane, Tecel, Phares."

and a translation thereof into the English language is as follows:

"Manila, October 30th, 1908.

Editorial.

Birds of Prey.

On the surface of the globe some were born to eat and devour, others to be eaten and devoured.

Now and then the latter have bestirred themselves, endeavoring to rebel against an order of things which makes them the prey and food of the insatiable voracity of the former. At times they have been fortunate, putting to flight the eaters and devourers, but in

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the majority of cases they did not obtain anything but a change of names or plumage.

The situation is the same in all the spheres of creation; the relation between the ones and the others is that dictated by the appetite and the power to satisfy it at the fellow-creature's expense.

Amongst men it is very easy to observe the development of this daily phenomenon. And for some psychological reason the nations who believe themselves powerful have taken the fiercest and most harmful creatures as emblems; it is either the lion, or the eagle, or the serpent. Some have done so by a secret impulse of affinity and others in the nature of simulation, of infatuated vanity, making themselves appear that which they are not nor ever can be.

The eagle, symbolizing liberty and strength, is the bird that has found the most adepts. And men, collectively and individually, have desired to copy and imitate the most rapacious bird in order to triumph in the plundering of their fellow-men.

There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire.

Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

Authorizing, despite laws and ordinances, and illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people.

Such are the characteristics of the man who is at the same time an eagle who surprises and devours, a vulture who gorges himself on dead and putrid meats, an owl who affects a petulant omniscience,

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and a vampire who silently sucks the blood of the victim until he leaves it bloodless.

It is these birds of prey who triumph. Their flight and their aim are never thwarted.

Who will detain them?

Some share in the booty and the plunder. Others are too weak to raise a voice of protest. And others die in the disconsolating destruction of their own energies and interests.

And then there appears, terrifying, the immortal legend:

Mane, Tecel, Phares."

That the said newspaper, "El Renacimiento," in the said issue of the 30th day of October, 1908, had, as the defendants well knew, a large circulation in the City of Manila and throughout the provinces of the Philippine Islands, in all of which the Spanish language is both read and spoken; that the said Dean C. Worcester was, at the time of said publication, and is now, well known by the officials of the Government of the Philippine Islands, and by the inhabitants of the City of Manila, and by the people of the
6 provinces of the Philippine Islands, and the public generally, not only personally but as a member of the Philippine Commission, and as Secretary of the Interior of the Philippine Islands. That the defamation and libel, and the words, terms and language used in said defamation and libel, as follows:

"Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to *copy* in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

Giving and admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipielago, with the money of the people, and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices, which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

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Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people."

were all intended by said defendants to refer to and mean the said Dean C. Worcester, and would be understood and were under-
7 stood by the officials of the Government of the Philippine Islands, the inhabitants of the City of Manila, and the people of the Philippine Islands generally, to refer to and mean the said Dean C. Worcester, for the reason that it is a matter of common knowledge that the said Dean C. Worcester, in the performance of his duties as such member of the Philippine Commission and as such Secretary of the Interior of the Philippine Islands, has heretofore ascended to the mountains of the province of Benguet in order to make a study of the native tribe known as the Igorots, who reside there; for the reason that it is a matter of general knowledge that there are large deposits of gold in said mountains of Benguet, and for the reason that, as a member of the Philippine Commission, which is the law-making body of said Philippine Islands, the said Dean C. Worcester has taken, and does take part in the making and repeal of the laws of said Philippine Islands; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has had under his supervision and control the enforcement of the laws of the Philippine Islands and the Ordinances of the City of Manila regarding the slaughtering of cattle; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has supervision and control of the Bureau of Science of the Government of the Philippine Islands, and is himself generally known as a man devoted to the study of science; and for the further reason that it is a matter of general know-
8 ledge that the said Dean C. Worcester in his capacity as such Secretary of the Interior of the Philippine Islands, has heretofore caused to be imported into the Philippine Islands fish eggs, for the purpose of stocking the mountain springs of said Philippine Islands; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has made journeys and explorations in the Islands of Mindoro, Mindanao, and in other regions of the Philippine Archipelago; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, at one time investigated and made a report to the Philippine Commission regarding the proposed purchase of a certain piece of land by the City of Manila; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, as a member of said Philippine Commission, along with the other members of said body, has heretofore been in negotiation with a certain hotel company in regard to the location of a proposed hotel on some of the filled-in lands of the City of Manila.

That the said defendants intended to and did charge the said Dean C. Worcester with prostituting his office as a member of the Philip-

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pine Commission and as Secretary of the Interior of the Philippine Islands, for private ends; with squandering the public funds for the purpose of promoting his personal welfare; with violating the laws of the Philippine Islands and the Ordinances of the City of Manila; with entering into illegal combinations for the purpose of
9 robbing the people, with the intent of gain to himself and certain other individuals; and that the said defamation would be and was so understood by the inhabitants of the City of Manila, the officials of the Government of the Philippine Islands, and the people of the Philippine Islands generally, to accuse the said Dean C. Worcester of the conduct and acts and things above set forth, and to state and publish by innuendo and inference that he, the said Dean C. Worcester, was guilty of said acts, deeds and doings; all of which allegations regarding the character and conduct of the said Dean C. Worcester, as above set forth, were and are false and without foundation in fact.

That the said defamation and libel was published by the defendants, and each of them, as aforesaid, wilfully and maliciously, under large and conspicuous headlines, and every effort made on the part of said defendants, and each of them, to insure that said defamation and libel attract the attention of and be read by all the subscribers and readers of the said newspaper, "El Renacimiento," and to give the said defamation and libel the widest possible — .

All contrary to the statute in such cases made and provided.

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Subscribed and sworn to before me, this 5th day of November, 1908, in the City of Manila, Philippine Islands, by L. M.
10 Southworth, Acting Prosecuting Attorney for the City of Manila.

CHAS. H. SMITH,
Judge Court of First Instance.

A preliminary investigation has been conducted under my direction, having examined the witnesses under oath, in accordance with the provisions of Section 39 of Act 183 (Manila Charter), as amended by Section 2 of Act 612 of the Philippine Commission.

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Subscribed and sworn to before me, this 5th day of November, 1908, in the City of Manila, Phillipine Islands, by L. M. Southworth, Acting Prosecuting Attorney for the City of Manila.

CHAS. H. SMITH,
Judge Court of First Instance.

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Witnesses.	Addresses.
Governor General Jas. F. Smith	Ayuntamiento.
Commissioner Newton W. Gilbert	Ayuntamiento.
Secretary of Finance & Justice Gregorio Araneta	Ayuntamiento.
A. O. Zinn	Ayuntamiento.
Dr. G. E. Nesom	Oriente Building.
B. Lowenstein	No. 34, Plaza Moraga.
11 M. A. Clarke	No. 2, Plaza Moraga.
T. P. Shuman	Post Office.
Enrique Barrera y Caldes	Not. Pub.
Arcadio Arellano	Maestro de Obras.

Thereafter and on the 5th of November, 1908, the defendants, Ocampo, Kalaw, Aguilar, Reyes and Santos, were duly arrested and turned over to the proper tribunal.

On the same day, November 5, 1908, in open court, the prosecuting attorney of the City of Manila and all of the defendants being present, the complaint against them filed in this case was read to them, and the court allowed them until the 7th of November, 1908, at 8 a. m. to plead thereto. Attorney Ramon Diokno then stated to the court that he appeared in behalf of the defendants and asked that they be furnished with a copy of the complaint, which petition was granted by the court, and a copy of the said complaint was handed to each one of the accused.

Thereafter and on the 7th of November, 1908, the defendants filed the following motion:

12 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
MARTIN OCAMPO, TEODORE M. KALAW, LOPE A. SANTOS, FIDEL A REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Motion.

Now comes the defendants, Martin Ocampo, Teodore M. Kalaw Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, in the above entitled cause and before demurring to or answering the complaint, to the court respectfully state:

1. That a warrant has been issued in this cause for the arrest of each of the defendants, and that all and each of them have been held to answer for a criminal offence, to-wit: the crime of libel,

without a preliminary investigation having first been held by the court and without any tribunal, judge, magistrate, or any other competent authority, having first determined in accordance with the law now in force, that the alleged crime of libel had been committed and that there was probable cause to believe that all and each of the said defendants were guilty of the crime charged, in violation of sections 12 and 13 of General Order No. 58, issued by the office of the Military Governor of the United States in
13 the Philippine Islands on April 23, 1900, and paragraphs 1, 3, 11 and 18 of section 5 of the Philippines Bill, enacted by the Congress of the United States on July 1st, 1902.

2. That section 2 of Act No. 612 of the Philippine Commission, approved Febrauary 3, 1903, although it deprives accused persons in the city of Manila of the right to a preliminary investigation, it does not, however, relieve this court of the duty to make the said preliminary investigation as provided in section 13 of the aforesaid General Order No. 58, the provisions of which, upon this subject, still continue in force in the city of Manila.

3. That section 2 of the said Act No. 612, which deprives accused persons in the city of Manila of the right to demand a preliminary investigation, is contrary to the provisions of section 5 of the aforesaid Philippines Bill, for the following reasons:

(*a*) Because it provides that accused persons in the city of Manila may be deprived of their liberty "without due process of law." (Par. 1.)

(*b*) Because it denies to the inhabitants of the city of Manila the legal protection of the judicial preliminary investigation before arrest, as provided in General Order No. 58 which is now in force in the Philippine Islands as to all persons, and in the city of Manila as to all informants and complainants, as well as to the courts, and therefore denies to the defendants the equal protection of the law. (Par. 1.)

(*c*) Because it deprives persons detained in the city of Manila to answer for a criminal offence of the "proper judicial proceedings." (Par. 3.)

14 (*d*) Because it violates the guarantee against arbitrary detention. (Par. 11.)

Wherefore, defendants pray this court to vacate the order of arrest heretofore issued against each of them, directing that they be forthwith discharged from custody and the bond by them given cancelled, and that all further proceedings in this cause be suspended until by a proper judicial proceeding the cause is brought within the jurisdiction of this court to try the same on the merits.

Manila, November 7, 1908.

(S'g'd) FELIPE AGONCILLO,
FERNANDO SALAS,
RAMON DIOKNO,
Attorneys for Defendants.

L. M. Southworth, Acting Prosecuting Attorney.

Filed on the 7th of November, 1908, at 8.15 a. m.

(S'g'd) FELIPE BUENCAMINO, Jr.,
Acting Assistant Clerk.

15 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORE M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Answer to Motion to Dismiss the Information in This Cause.

Now comes the undersigned Assistant Prosecuting Attorney for the City of Manila, and in answer to the Motion of the accused herein to dismiss this Cause, respectfully submits that the same should be overruled, for the following reasons, to-wit:

(1) Because the information shows upon its face that a preliminary examination was held upon the charge alleged in said information, by the Prosecuting Attorney, in accordance with Act 612 of the Philippine Commission.

(2) Because there is no law in the Philippine Islands requiring the Judges of the Court of First Instance of the City of Manila to hold preliminary investigations in criminal causes, and issue orders of probable cause, where the Prosecuting Attorney, after due investigation of the facts, as in this case, has presented an information against the accused, in proper form.

16 (3) Because the accused have waived any rights which they may have had to object to any defects or irregularity in the warrants of arrest, by appearing before the Court and giving bond for their several appearances before said Court at a subsequent day of the term, to answer to the information against them.

It is therefore respectfully submitted that the motion should be overruled, and the defendants required to plead to the information.

_____,
Assistant Prosecuting Attorney.

17 UNITED STATES OF AMERICA.
Philippine Islands:

In the Court of First Instance for the City of Manila. Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Order on Motion of Defendant for Further Time in Which to Present Arguments in Support of Motion to Quash Complaint and Warrant.

At 8 o'clock in the morning of the 7th day of the present month, two days after the reading of the information in this case, a motion was presented on behalf of the defendants that the warrant and information be quashed, based upon two reasons: (1) That the preliminary investigation prescribed by law had not been practiced in this case; and (2) That no specific finding as to probable cause had been made by the court.

At that time counsel were advised by the court that the decision upon said motion would be rendered at this hour, to wit, at 8 o'clock in the morning on the 10th day of November. Defendants' counsel were specifically advised by the court that if they cared to submit any arguments in support of said motion the same should be presented in writing during the day, to wit, the 7th day of November. Up to the time fixed for the decision, as aforesaid, to wit, the 10th day of November, no arguments in writing in support of said motion have been submitted by defendants' counsel. This branch of
18 the court is occupied, and it would be unjust to postpone the *the* decision of the court longer, both to the defendants and to other persons interested in the disposition of their cases in this branch of the court. The court has carefully considered this motion. Both the propositions urged in the motion have been considered in a most studious manner by the Honorable Supreme Court of the Philippine Islands in the case of the United States vs. Wilson, the decision of which is reported in the 4th volume of the Philippine Reports. It is not a question, therefore, of the opinion which the presiding judge here now might have, but it is his duty to follow and be governed by the interpretation of the law promulgated by the Honorable Supreme Court.

Upon considering said motion for further time within which to present arguments in support of said motion to quash, and the court having granted to defendants' counsel an opportunity to present oral arguments in support of said motion at the time fixed for the

decision of the court thereon, and defendants' counsel having declined to avail themselves of the aforesaid privilege to present such oral arguments, it is ordered that said motion be denied.

Manila, P. I., November 10, 1908.

(S'g'd) CHAS. H. SMITH, *Judge*.

I hereby certify that the above decision was on this date, November 10, 1908, dictated in the presence of all the accused accompanied by their attorneys, and that they accepted notice of same at the time together with an oral exception thereto.

(S'g'd) FELIPE BUENCAMINO, JR.,
Actg. Asst. Clerk.

19 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, *Plaintiff*,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Judgment on Motion to Quash.

The information was presented in this case on the 5th day of November, 1908, and was accompanied, as shown by the files in this case, by two affidavits of Mr. L. M. Southworth, assistant prosecuting attorney of the city of Manila, in the first of which the said prosecuting attorney swears to said information, and in the second of which the said official swore that he had practiced the preliminary investigation in the office of the prosecuting attorney of the city of Manila prescribed by section 39 of Act No. 183 of the Honorable Philippine Commission, being the charter of the city of Manila, as amended by section 2 of Act No. 612 of said Commission. Said affidavits were signed and sworn to before the judge presiding over the criminal branch of this court. A warrant was thereupon issued for the arrest of the defendants who, in pursuance of said warrant, were brought into the court on the same day, the said information was read to them and they were allowed until the morning of the 7th day of November to plead thereto. At the conclusion of
20 the reading of said complaint the defendants with the assistance of their counsel all presented a bail bond in the sum of one thousand pesos each, and were then released from custody, being ordered to return to court the morning of the said seventh day of November. At the time last before mentioned the defen-

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dants with their counsel all appeared in court and presented in writing a motion to quash the proceeding herein, which motion is based upon two propositions: (1) That the preliminary investigation required by law has not been practiced in this court; (2) That no specific order has been issued by the court in which it has been determined that the crime complained of has been committed and that there is reasonable ground to believe that the parties charged have committed such crime.

1. The charge in this case is a violation of the provisions of chapter 297 of the compiled laws of the Philippine Commission. The punishment prescribed for such violation is "a fine of not exceeding four thousand pesos, or imprisonment not exceeding one year, or both," so that the case is only triable in this court. Section 13 of General Order No. 58 (being section 3261 of the compiled laws) provides that:

"When a complaint or information alleging the commission of a crime is laid before a magistrate, he must examine, on oath, the informant or prosecutor and the witness produced, and take their depositions in writing, causing them to be subscribed by the parties making them. If the magistrate be satisfied from the investigation that the crime complained of has been committed, and that there is reasonable to believe that the party charged has committed it, he must issue an order for his arrest. If the offense be bailable, and the defendant offer a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison."

21 This law was promulgated during the military government of the Philippine Islands under American sovereignty, and after the establishment of the civil government here and the volume of business in this court was found to be substantially larger than was anticipated, the law hereinbefore mentioned was enacted by the Honorable Philippine Commission to furnish relief to this court in the city of Manila. Thereupon such relief was provided by means of Act No. 612 of said Commission, the second section of which, so far as the same is applicable to this case, is as follows:

"In cases triable in the Court of First Instance of the city of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the Prosecuting Attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment, shall have presented an information against him in proper form. Provided, however, That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable."

The validity of this law and the sufficiency of the provisions thereof in the matter of criminal procedure treated therein were submitted to and considered by the Honorable Supreme Court of the Philippine Islands in a very able decision of that court in the case entitled "United States, complainant, vs. William A. Wilson, defendant," reported in volume 4 of the Philippine Reports, English Edition, at page 317, etc. In a very studious examination of said

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last mentioned case, the Honorable Supreme Court determined that a preliminary investigation conducted by the prosecuting attorney of the city of Manila or his assistants, in pursuance of the
22 provisions of such section 2 of said Act No. 612, was sufficient to meet the requirements of the law operative in the Philippine Islands in the matter of preliminary investigations, and that no further investigation is now required to be made by the magistrate, who in the city of Manila is the trial judge.

It appears of record in the case at bar that the assistant prosecuting attorney of the city of Manila has practiced in the office of the prosecuting attorney of said city the preliminary investigation required by law. This is shown by his sworn statement annexed to said information and sworn to by him before the trial judge here. Under these circumstances and being governed by the rule promulgated by the Honorable Supreme Court of the Philippine Islands in the said Wilson case, the court must and does overrule said motion as to the said first proposition.

2. A specific separate order of the court as to probable cause, etc., is no longer required by law in criminal causes (felonies) instituted in this court (city of Manila). The practice prescribed in said section of General Order 58 was only required in cases in which the preliminary investigations therein were conducted by the trial judge or magistrate; in fact, said section of general order No. 58 does not provide that a written order of this end must be made by such magistrate. However, as to the city of Manila, said practice has been entirely substituted by section 2 of said Act No. 612. The prosecuting attorney of the city of Manila, according to
23 the provisions of section 486 of the compiled laws (section 39 of Act No. 183 of the Commission), is a judicial officer, having full authority to make preliminary investigations and present informations in all criminal cases, and when he as such officer presents in court an information sworn to by him accompanied by an affidavit that he has practiced the preliminary investigation required by law, in pursuance of said Act No. 612, and takes such oaths before the magistrate, who is the judge presiding over this (criminal) branch of the court, probable cause, supported by oath or affirmation, appears of record in the case. In reality at the time of the presentation of said information, together with said affidavits, the trial judge (magistrate) considered and determined that probable cause, etc., had been shown. The issuance of the warrant signed by the same magistrate or trial judge must be considered as a determination on the part of the court or magistrate as to probable cause, etc., if such a determination is now necessary under the amended laws applicable to this feature of the case. Through the assistance of defendants' counsel a bail bond was provided by them and approved by the court at the time of the reading of the complaint, and one and one-half days before the presentation of this motion. Under the rule laid down in text books and in the American and English Encyclopedia of Law, the questions raised in said motion are unreasonable.

In the said Wilson case, the Honorable Supreme Court considered

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this very question, and there not appearing in the record
24 a specific order of the trial judge (magistrate) as the probable cause, the Supreme Court held that the same is not now an indispensable legal step in a criminal cause instituted in this court (city of Manila).

During the last two years it has been impossible to conduct preliminary investigations before the judge (magistrate) presiding over this criminal sala, and it has not been considered necessary, in view of the doctrine promulgated by the Honorable Supreme Court of the Philippine Islands in the said Wilson case. The rule of procedure approved and settled in the said last mentioned case has been followed by all the judges presiding over this branch of the court, and very properly so in view of the great magnitude of business pressed upon the court for its attention.

Following and being governed by the interpretation of the law as found in the said decision of the Honorable Supreme Court of the Philippine Islands, this court must and does overrule the said motion as to said second proposition.

It is therefore ordered that said motion be denied, and that the defendants each and all plead to said information forthwith.

Manila, P. I., November 10, 1908.

(S'g'd) CHAS. H. SMITH, *Judge.*

I hereby certify that all the accused accompanied by their attorneys accepted notice of the above decision on the 10th of November 1908, in open court.

(S'g'd) FELIPE BUENCAMINO, Jr.,
Actg. Asst. Clerk.

25 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES and FAUSTINO AGUILAR, Defendants.

Libel.

Exception.

The defendants hereby except to the order of the court of this day overruling their motion of the 7th instant.

Manila, November 10th, 1908.

(S'g'd) FELIPE AGONCILLO,
FERNANDO SALAS,
RAMON DIOKNO,
Attorneys for Defendants.

Filed this 10th day of November, 1908, at 8.30 a. m.

(S'g'd) FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

26 THE UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES
vs.
MARTIN OCAMPO et al.

Libel.

I hereby certify, with the approval of the judge presiding over this section of the court, that the defendants in this case, through their attorneys, at the time their motion to dismiss the complaint in this case was overruled, objected thereto and respectfully excepted to any further action on the part of the court or any further proceedings which might be had in said cause.

(S'g'd) FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

27 THE UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the City of Manila.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES and FAUSTINO AGUILAR, Defendants.

Libel.

Motion.

Now come Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, the defendants in the above-entitled cause, and without waiving any of the objections by them raised in their motion of the 7th instant, and the exception by them taken to the order of this court denying the same, and which they now reproduce in all its parts, respectfully ask the court that there be submitted to this court and to them for examination the proceedings of the preliminary investigation alleged to have been conducted by the acting prosecuting attorney of the city of Manila, and that

until the accused have fully examined the said proceedings, they be not compelled to demur or answer to the complaint.

This petition is based upon the following grounds:

1. That the said preliminary investigation is the basis of the complaint and should show the nature, character and origin of the accusation.

28 2. In that all and each of the accused have a right to be fully informed of the nature, character and origin of the accusation against them before they can demur or answer to the complaint, in conformity with the provisions of section 5, paragraph 2, of the Philippines Bill, approved July 1st, 1902, by the Congress of the United States, and section 15, paragraph 2, of General Order No. 58, issued April 23, 1900, by the Office of the Military Governor of the United States in the Philippine Islands.

Manila, November 10, 1908.

(S'g'd) FELIPE AGONCILLO,
FERNANDO SALAS,
RAMON DIOKNO.
Attorneys for Defendants.

Filed November 10, 1908, at 8.45 a. m.

(S'g'd) FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

29 UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Judgment on Motion.

A motion is presented in this case by defendants' counsel for an order of the court requiring the prosecuting attorney to place before the court, and the defendants, the whole of the preliminary investigation conducted in this case in the office of the prosecuting attorney.

1. The charge in this case is libel; violation of Act No. 277 of the Philippine Commission. The published article complained of is set out in full in the information, so that no one can be misguided or deceived as to the character of the crime complained of.

2. The prosecuting attorney of the city of Manila is by the law governing that office, a judicial officer. His duties in the matter of

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preliminary investigations are prescribed by law, to wit, Act No. 612 of the Honorable Philippine Commission; likewise section 486 of the compiled laws of the Philippine Islands. His duties are separate and distinct from those of the court. In each of these two branches of the judiciary there are plain limitations prescribed by law. The court has grave doubt, upon the refusal of the prosecuting attorney to present such information in compliance with the order of the court, that said prosecuting attorney could be punished for a violation of the order of the court.

3. The question submitted in this motion was clearly settled in the case of the United States vs. Wilson, reported in the 4th volume of the Philippine Reports. The rules promulgated in that case must govern this court in the application of the law here now. Besides this, no showing has been made, and it has not been claimed, that the prosecuting attorney has refused to give the information sought, upon application therefor.

4. If the motion presented at this time could have merit at any stage of the case, it is inopportune now.

The motion is therefore denied and the defendants ordered to plead.

Manila, P. I., November 10, 1908.

(S'g'd) CHAS. H. SMITH, *Judge.*

I hereby certify that the above decision was dictated in the presence of all the accused accompanied by their attorneys, and that they accepted notice of same at the time.

(S'g'd) FELIPE BUENCAMINO, Jr.,
Act'g Ass't Clerk.

To the foregoing judgment defendants, through their attorneys, duly excepted in writing. November 10, 1908.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
TEODORO M. KALAW, FIDEL A. REYES, LOPE K. SANTOS, FAUSTINO AGUILAR, and MARTIN OCAMPO, Defendants.

Libel.

Motion.

Now come Teodoro M. Kalaw, Fidel A. Reyes, Lope K. Santos, Faustino Aguilar and Martin Ocampo, the defendants in the above entitled cause, and respectfully ask this court to hold a preliminary

investigation in this cause before the said accused either demur to or answer the complaint.

This motion is based upon the provisions of General Order No. 58 and section 5 of the Philippines Bill and other laws of the Commission, which grant an accused person in a criminal cause the right to a preliminary investigation, and also upon the ground that the provisions of section 2 of Act No. 612 which deny to accused persons in the city of Manila such right are null and contrary to the Constitution of the United States, the same being in violation of the provisions of said section 5 of the Philippine Bill, paragraphs 1, 3, 11 and 18.

Manila, P. I., November 12, 1908.

(S'g'd) FELIPE AGONCILLO,
FERNANDO SALAS,
RAMON DIOKNO,
Attorneys for Defendants.

R'e'd Copy.
L. M. SOUTHWORTH,
Ass't Pros. Attorney.

32 UNITED STATES OF AMERICA,
Philippine Islands

In the Court of First Instance for the City of Manila, Part 1.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Judgment on Motion of Defendants' Counsel for an Order of the Court Requiring at this Time that a Preliminary Investigation Be Conducted by the Court.

The defendants are all present in court; likewise their counsel, and counsel for the government.

The information was read in this cause on the 5th day of November, at which time the defendants were ordered to appear in court on the morning of the 7th of November to plead to said complaint. On the morning of November 7th, a motion was presented by defendants' counsel for an order of the court quashing the complaint and warrant filed and issued in this cause, upon two certain reasons stated therein. An adjournment was then ordered by the court to the morning of the 10th day of the present month, for the purpose of considering said motion and rendering a decision thereon. On the morning of the 10th of November defendants with their

counsel appeared in court, at which time the government was represented by the prosecuting attorney and his assistant, Mr. Southworth. Said motion was then and there overruled. Im-
33 mediately following said decision a motion was presented by defendants' counsel for an order of the court requiring the prosecuting attorney to present and exhibit in this case the preliminary investigation practiced in the office of the prosecuting attorney, in pursuance of the provisions of Act No. 612 of the Honorable Philippine Commission, which motion was denied, being founded upon the rule promulgated in the case of the United States against Wilson, reported in the 4th Volume of Philippine Reports. Defendants' counsel then requested further time within which to present a demurrer to said complaint, and for nothing more. This application was granted and the defendants were ordered to appear in court at this time, to wit, nine o'clock A. M., November 12, 1908, for the presentation of said demurrer, as the only further dilatory plea, and then to answer to said complaint.

At the last mentioned time, to wit, nine o'clock A. M., November 12, 1908, defendants' counsel now present a motion for an order of the court authorizing and directing that a preliminary investigation be now conducted in this case.

Considering the foregoing proceedings in this case, and the orders of the court issued therein, together with the provisions of Act No. 612 of the Honorable Philippine Commission, as interpreted by the Honorable Supreme Court in said case of the United States vs. Wilson; and, no showing having been made of any special reason why a preliminary investigation should be conducted by the court at this
34 time, and this criminal branch of the court being occupied with the consideration of a substantial volume of business, and the charge in this case being criminal libel, the article complained of being set out in full in the information, it is ordered that said motion be denied, and that the defendants plead to said complaint forthwith.

Manila, P. I., November 12, 1908.

CHAS. H. SMITH, *Judge.*

I hereby certify that the above decision was rendered by the Court in the presence of all the accused accompanied by their counsel, and that they accepted notice of it at the time.

FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

To the foregoing order defendants, through their attorneys, duly excepted in writing, November 12, 1908.

Thereafter and on the 12th of November, 1908, each of the defendants in the above-entitled cause filed a motion in the Court of First Instance for a separate trial under the provisions of section 33 of General Order No. 58.

35 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for Manila, Sala I.

Criminal Cause No. 4295.

THE UNITED STATES
vs.
MARTIN OCAMPO et al.

Libel.

Order.

Upon reading and considering the motion filed by each one of the accused in this cause, asking for a separate trial, the Court orders that the determination of each one of said motions be suspended until the completion of the arraignment in this cause.

It is so ordered.

Manila, P. I., November 12, 1908.

(S'g'd) CHAS. H. SMITH, *Judge.*

I hereby certify that the above order was rendered by the Court in the presence of all the accused accompanied by their attorneys, and that notice of it was by them accepted at the time.

(S'g'd) FELIPE BUENCAMINO, Jr.,
Acting Assistant Clerk.

36 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part I.

Criminal Cause No. 4295.

THE UNITED STATES, Plaintiff,
versus
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Demurrer.

Now comes the defendant Teodoro M. Kalaw, and, through his attorneys, hereby demurs to the complaint upon the following grounds:

I.

That the court had no jurisdiction of the offence charged in the complaint.

(A) The preliminary investigation as to a person accused of crime is essential in order to authorize proceedings against such person by information or complaint.

Encyc. of Pl. & Prac., Vol. 16, pp. 821-822.

This doctrine is supported by a large number of decisions which are cited below:

California:

People v. McCurdy, 68 Cal. 576;
People v. Van Horn, 119 Cal. 323;
People v. Kilvington, (Cal. 1894) 36 Pac. Rep. 13;
People v. Sherman, (Cal. 1893) 32 Pac. Rep., 879;
Ex parte Baker, 88 Cal. 84;
People v. Bawden, 90 Cal. 195.
People v. Goldenson, 76 Cal. 328;
People v. Tarbox, 115 Cal. 57;
Ex parte Walpole, 85 Cal. 382;
Kalloch v. Superior Ct. 56 Cal. 229;
People v. Barnes, 66 Cal. 594.

37 Colorado:

Ratcliffe v. People, 22 Colo. 75;
Holt v. People, 25 Colo. 1.

Idaho:

State v. Braithwaite, 2 Idaho 857;
State v. Clark (Idaho 1894) 35 Pac. Rep. 710.

Indiana:

Simmons vs. Vandyke, 138 Ind. 380;
Johns v. State, 104 Ind. 557.

Kansas:

State v. Reedy, 44 Kan. 190;
State v. Woods, 49 Kan. 237;
State v. Gleason, 32 Kan. 245;
State v. Montgomery, 8 Kan. 351;
State v. Nulf, 15 Kan. 404;
State v. Barnett, 3 Kan. 250; 87 Am. Dec. 471;
Matter of Shurman, 40 Kan. 533.

Kentucky:

Osborn v. Com., 14 Ky. L. Rep. 246, (Ky. 1892) 20 S. W. Rep. 273.

Louisiana:

State v. Recorder, 42 La. Ann. 1091;
Macarty's Case, 2 Martin (La.) 269.

Massachusetts:

Com. v. Tolan, 108 Mass. 426;
Phillips vs. Fadden, 125 Mass. 198;
Papineau v. Bacon, 110 Mass. 319.

Michigan:

People v. Jones, 24 Mich. 215;
Brown v. People, 39 Mich. 37;
People v. Kuhn, 67 Mich. 463;
People v. Brock, 64 Mich. 691;
People v. Evans, 72 Mich. 367;
Swart v. Kimball, 43 Mich. 443;
Washburn v. People, 10 Mich. 372;
People v. Chapman, 62 Mich. 280;
O'Hara v. People, 10 Mich. 623;
People v. Wright, 89 Mich. 70;
People v. McKinney, 10 Mich. 93;
Turner v. People, 33 Mich. 363;
Sneed v. People, 38 Mich. 248;
Stuart v. People, 42 Mich. 257.

38 Montana:

State v. Brett, 16 Mont. 360.

Nebraska:

White v. State, 28 Neb. 341;
Latimer v. State, 55 Neb. 609;
Coffield v. State, 44 Neb. 617;
White v. State, 28 Neb. 341.

New Hampshire:

State v. Tompson, 20 N. H. 250;
State v. Gilton, 32 N. H. 285;
State v. Stevens, 36 N. H. 59.

New York:

Pratt v. Hill, 16 Barb. (N. Y.) 303;
Matter of Ramscar, 1 N. Y. Crim. Rep. 33,
People v. Drury, 2 Edm. Sel. Cas. (N. Y.) 351,
Green v. Kennedy, 46 Barb. (N. Y.) 16.

North Dakota:

State v. Hasledahl, 3 N. Dak. 36.

Pennsylvania:

Com. v. Groff, 8 Lanc. L. Rev. (Pa.) 267;
Matter of Memorial Citizens' Assoc., 8 Phila. (Pa.) 178

Tennessee:

Touhey v. King, 9 Lea (Tenn.) 422;
State v. McCoy, 1 Baxt. (Tenn.) 111.

Texas:

Sate v. Miller, 31 Tex. 565.

Vermont:

Whitcomb v. Cook, 38 Vt. 477.

Virginia:

Jackson v. Com., 23 Gratt. (Va.) 919;
Butler v. Com., 81 Va. 159;
Hurd v. Com., 5 Leigh (Va.) 715;
Forde v. Com., 16 Gratt. (Va.) 547;
Com. v. Myers, 1 Va. Cas. 188;
Com. v. Linton, 2 Va. Cas. 205.

West Virginia:

State v. Strauder, 8 W. Va. 686.

Wisconsin:

State v. Sorenson, 84 Wis. 27;
In re Burkhardt, 33 Fed. Rep. 25
Martin v. State, 79 Wis. 165.

Wyoming:

State v. Krohne, 4 Wyoming, 347.

39 United States:

U. S. v. Shepard, 1 Abb. (U. S.) 431;
Ex p. Bollman, 4 Cranch (U. S.) 75.

In one of the aforesaid decisions the following was held:

"Until the examining magistrate has determined that an offense, not cognizable by a justice of the peace, has been committed, and that there is probable cause to believe the respondent guilty thereof, and has so certified to the circuit court, the prosecuting attorney has no authority to file an information, and a return by order of the court, made after such filing, will not give the court jurisdiction to proceed on said information." (People v. Evans, 72 Mich. 367).

In the case at bar no preliminary investigation was conducted by the Court of First Instance, and for this reason the court never acquired jurisdiction to try the same.

(B) It is alleged that the prosecuting attorney has conducted the preliminary investigation in the manner provided for in section 39 of Act No. 183, as amended by Act. No. 612 of the Philippine Commission, and that this is sufficient for the purposes of this trial, but we contend that section 2 of Act. No. 612, and all proceedings had thereunder, cannot in any manner confer jurisdiction upon this court to try the case for the reason that the said section is unconstitutional and, therefore, null and void.

The phrase "unconstitutional law," though a contradiction in terms, is used to designate a rule of action that is sought to be established in opposition to the provisions or principles of the fundamental law, and which is therefore in excess of the authority of the body or official promulgating it, and consequently void. (6 A. & E. Ency. of Law, 890.)

The provision contained in the aforesaid section 2 of Act No. 612, in so far as it provides that "an accused person in the Court of First

Instance of the City of Manila shall not be entitled as of
40 right to a preliminary examination in any case where the prosecuting Attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment (No. 183), shall have presented an information against him in proper form" is unconstitutional, because it is in conflict with some of the provisions and principles contained in the Philippines Bill.

By reason of the fact that the said provision is now in force, the inhabitants of the city of Manila are placed at the following unfair disadvantages:

1. That persons (inhabitants of the city of Manila) are deprived of their liberty without the proper judicial proceedings, for the reason that the investigation conducted by the prosecuting attorney is not precisely the investigation required by section 13 of General Order No. 58, which has been confirmed and ratified by paragraph 1, section 5, of the Philippines Bill, wherein it expressly provides that "no law shall be enacted in the Philippine Islands which shall deprive any person of * * * liberty * * * without due process of law."

This provision of paragraph 1 of the Philippines Bill is made complete by the provisions of paragraph 3, which provide that "no person shall be held to answer for a criminal offense without due process of law."

2. That the inhabitants of the city of Manila are denied the legal protection or guarantee of a preliminary investigation before their arrest, which is not true as to the rest of the Filipinos, to whom section 13 of General Order No. 58 secures the right to be cited and to appear and defend themselves in the preliminary investi-
41 gation, whereas said section 2 of Act No. 612 completely denies to the residents of the city of Manila the right to attend the preliminary investigation to which they may be subjected before the filing of the complaint. Therefore, the principle of "equal protection of the law" is not complied with but, on the contrary, is openly violated.

3. Because it infringes upon the right to be protected against arbitrary detentions. It entrusts the preliminary investigation to the prosecuting attorney of the city of Manila, who may conduct the same in the absence of the defendants, as occurred in the present case, and it is left entirely with the prosecuting attorney to determine whether or not, in view of the investigation made by him, the complaint should or should not be filed. And because the defendants being deprived of the opportunity of defending themselves during the preliminary investigation, the prosecuting attorney of the city of Manila may, without sufficient grounds therefor and acting upon a mistaken conception of the facts, file a complaint which may deprive the innocent defendant of his liberty.

Any criminal proceeding which absolutely denies to the citizen the right to be exempt from "the annoyance, expense, and the work and risk of being tried" for a crime to which the law assigns an afflictive penalty until it has been shown that there is "reasonable cause" to proceed against him is an open violation of the constitu-

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tional provisions contained in paragraphs 1 and 3, above mentioned, of section 5 of the Philippines Bill.

42 The right of the inhabitants of the city of Manila, as has been authoritatively expressed, not to be compelled to go to trial for a felony without some appropriate and orderly proceeding for the purpose of determining whether there is reasonable ground to proceed against them, rests upon a broader and more solid foundation than the express or implied provisions of the law in force, and is secured by that Act of Congress in the same terms as in the Constitution of the United States.

Act No. 612, however, entirely denies such right to the defendants, in section 2. It deprives a part of the inhabitants of the Philippines of one of the guarantees of their personal liberty, to-wit, the judicial determination of whether or not there is probable cause. It makes the Government a party and the judge in the same proceedings. It makes it a party because the Government is the complainant, and it makes it the judge because it confers upon it a judicial judgment which is unappealable, unquestionable and imperceptible, based upon a mysterious and secret investigation.

In the case at bar there is not the slightest shadow of any declaration as to the existence of probable cause, and the prosecuting attorney has not even taken the pains to certify that such probable cause exists. He has expressly refrained from making any statement upon the subject. Neither has the court made any decision upon this point; nevertheless, the defendants have been arrested.

"This principle—due course of law—refers to certain fundamental rights which that system of jurisprudence, of which ours is a derivative, has always recognized. If any of these are disregarded, in the proceedings by which a person is condemned to the loss
43 of life, liberty or property, then the deprivation has not been by 'due course of law.'"

(Brown v. Levee, 50 Miss., 468.)

"It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. * * *"

(Loan Association v. Topeka, 20 Wall., 655.)

Under whatever aspect may be considered the jurisdiction of this court, such jurisdiction cannot be sustained.

II.

That the Acts Charged Do Not Constitute the Crime of Libel.

Nowhere in the article quoted in the complaint, nor in any of the paragraphs pointed out as libelous, is any reference made to any

particular person or to Mr. Dean C. Worcester, who, according to the complaint, is the person alluded to.

The article which is alleged to be libelous begins as follows:

"On the surface of the globe some were born to eat and devour, others to be eaten and devoured.

Now and then the latter have bestirred themselves, endeavoring to rebel against an order of things which makes them the prey and food of the insatiable voracity of the former. At times they have been fortunate, putting to flight the eaters and devourers, but in the majority of cases they did not obtain anything but a change of name or plumage.

The situation is the same in all the spheres of creation: the relation between the ones and the others is that dictated by the appetite and the power to satisfy it at the fellow-creature's expense.

Amongst men it is very easy to observe the development of this daily phenomenon. And for some psychological reason the nations who believe themselves powerful have taken the fiercest and most harmful creatures as emblems: it is either the lion, or the eagle, or the serpent. Some have done so by a secret impulse of affinity
44 and others in the nature of simulation, of infatuated vanity, making themselves appear that which they are not nor ever can be.

The eagle, symbolizing liberty and strength, is the bird that has found the most adepts. And men, collectively and individually, have desired to copy and imitate the most rapacious bird in order to triumph in the plundering of their fellow-men."

Immediately after this vague and indefinite statement, and with no less vagueness and indefiniteness, before describing certain characteristics which, it is alleged in the complaint, refer to the alleged offended party, the article says:

"There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire."

The article in question winds up in the same general way by saying:

"It is these birds of prey who triumph. Their flight and their aim are never thwarted.

Who will detain them?

Some share in the booty and the plunder. Others are too weak to raise a voice of protest. And others die in the disconsolating destruction of their own energies and interests.

And then there appears, terrifying, the immortal legend:

Mane, Tecel, Phares."

To say, after reading the foregoing quotations, that the article in question refers to the complaining witness is to insist upon a construction of the same more in conformity with the latter's interests than with the true meaning of the article itself.

"When the language of a writing claimed to be libelous is so vague and uncertain that it could not have been intended to be used with reference to any particular person or persons, such language is not actionable." (Petsch v. St. Paul Distpatch Printing Co. (Minn.) 41 N. W. Rep., 1034.)

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According to Mr. Martin L. Newel (On Defamation, Slander and Libel) (Edition of 1900, p. 241), in every action for defamation two things are necessary:

45 1. A defamation must clearly appear from the words themselves, because no innuendo can change their meaning.

2. The certainty of the person defamed, because no explanation can make certain that which is uncertain.

A reading of the article alleged to be libelous will show that the statements quoted in the complaint as constituting libel do not refer to any particular person, except to those mentioned in the preceding paragraph which is as follows:

"There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire."

It can hardly be contended that these statements refer to any particular person, and much less to the complaining witness, for the reason that the words "there are men who have such characteristics" cannot be construed to refer to any particular person without doing violence to the plain meaning of the words and without being actuated by deliberate prejudice.

It will not do to allege that "the public officials of the Government of the Philippine Islands, the inhabitants of the city of Manila and the people of the Philippine Islands generally" have understood that the article claimed to be libelous refers to the said Dean C. Worcester. This, besides being very doubtful, constitutes an allegation which is absolutely immaterial since it can have no foundation in the words of the article themselves.

"The language of a criminal libel shall be construed and understood in the sense in which the accused intended it and not as other persons or the court may construe or understand it." (C. v. Kneeland, 20 Pick. 206-216; Updegraff v. C., 11 S. &c. R., 394, 405, 406.)

The same doctrine is laid down by Bishop. (1 Bishop on New Criminal Law, 186, 8th Edition.)

46 "The opinion of a witness as to the intended application of the defamatory words to plaintiff is inadmissible."
(25 Cyc. 493.)

The foregoing doctrine is supported by the following decisions:

White v. Sayward, 33 Me., 322;
Gribble v. Pioneer Press Co., 37 Minn. 277, 34 N. W. 30;
O'Brien v. Bennett, 72 N. Y. App. Div. 367; 76 N. Y. Suppl. 498;
Stokes v. Morning Journal Assoc., 66 N. Y. App. Div. 569; 73 N. Y. Suppl. 245;
Maynard v. Beardsley, 7 Wend. (N. Y.) 560; 22 Am. Dec. 595;
Gibson v. Williams, 4 Wend. (N. Y.) 320;
Van Vechten v. Hopkins, 5 Johns (N. Y.) 211; 4 Am. Dec. 339;
Rangler v. Hummel, 37 Pa. St. 130;
O'Donnell v. Wilkes-Barre Times, 13 Luz. Leg. Reg. (Pa.) 89.

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In a decision rendered by one of the courts of Kentucky the following doctrine was laid down:

"The testimony of hearers as to whom they thought the charge referred, judging by current rumor or conversations of others, is inadmissible."

(Allenworth v. Coleman, 5 Dana (Ky.) 315.)

In considering the article in question, the court should bear in mind the freedom of the press, which is one of the greatest monuments of our modern civilization. For this reason constitutions protect such freedom; and the laws and the governments should not abridge it.

We may quote to the court the following words from Bishop:

"It being fundamental with us that the open and appropriate discussion of things affecting the public should be free, the libel law should never be applied so as to abridge the just freedom of the press. Consequently, although a certain publication may appear on its face as being prohibited by the general libel law, if the
47 suppression of the same is likely to abridge the free discussion of matters essential to the liberty of the citizens or any other public or private right, such publication should not be punished criminally."

For the foregoing reasons the defendant in the above-entitled case prays this court to dismiss the complaint, with the costs of this action de oficio.

Manila, P. I., November 12, 1908.

(Signed) FELIPE AGONCILLO,
RAMON DIOKNO,
FERNANDO SALAS,
Attorneys for Defendant.

48 UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Judgment on Demurrer Interposed by the Defendant Teodoro M Kalaw.

Upon reading and considering the information presented in this case, the court is satisfied and so finds that the same is prepared in

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accordance with the provisions of section 6 of General Order No. 58, being section 3253 of the Compiled Laws.

The matter urged in part one of the demurrer presented in this cause has already been considered and determined by the court in its previous orders issued herein.

In part two of said demurrer the question of the failure of specification of the name of the complaining witness or offended person in the article complained of here is urged as a fatal omission or infirmity in the information. This question, as the court remembers it, has been considered and determined by a Federal court in the case of 'Enquirer Co. vs. Johnson', reported in the 72nd Federal Reporter, in which case the doctrine was promulgated that an acquaintance of an offended person in matters of this kind may testify that upon reading the article complained of he understood it to refer to such offended person. This question was also con-
49 sidered by the Honorable Supreme Court of the Philippine Islands in the case of Causing vs. Jacosalem, reported in the 5th Volume of Philippine Reports, at page 155 of the English edition.

Considering all the questions submitted in said demurrer and the arguments of counsel in support thereof, the court finds that said demurrer is not well founded, and it is ordered that the same be overruled, and that the defendants each and all plead to said complaint forthwith.

Manila, P. I., November 12, 1908.

(S'g'd) CHAS. H. SMITH, *Judge.*

I hereby certify that the above decision was rendered by the court in the presence of the accused Kalaw accompanied by his attorneys, and that notice of it was accepted at the time.

(S'g'd) FELIPE BUENCAMINO, JR.,
Acty. Asst. Clerk.

To the foregoing order each and all of the defendants separately excepted. November 12, 1908.

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50 UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the City of Manila. Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO et al., Defendants.

Libel.

Order.

Upon the issuance of the order of the court overruling the demurrer presented by each of the defendants to the information in this cause, they were each asked by the court to plead to said information, and each defendant stood mute.

It is therefore ordered that the plea of not guilty be entered in said cause for and in behalf of said defendants.

Manila, P. I. November 12, 1908.

CHAS. H. SMITH, *Judge.*

I hereby certify that the above order was rendered by the Court in the presence of all the accused accompanied by their attorney and that notice of same was at the time accepted.

FELIPE BUENCAMINO, JR.
Acting Assistant Clerk.

51 THE UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for Manila, Sala I.

Criminal Cause No. 4295.

THE UNITED STATES
vs.
MARTIN OCAMPO et als.

Libelo.

Order.

The arraignment in this cause having now become completed, it is ordered that the motion filed by each defendant for a separate trial be and is hereby granted.

It is further ordered that all the accused and counsel for both sides appear before this court on Saturday, November 14th, 1908, at

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10:00 o'clock in the morning of said day, for the purpose of fixing the date of trial and for the further orders of the Court.

It is so ordered.

Manila, P. I., November 12, 1908.

(S'g'd) CHAS. H. SMITH, *Judge.*

I hereby certify that the above order was rendered by the Court in the presence of all the accused accompanied by their counsel, and that notice of it was by them accepted at the time.

(S'g'd) FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

52 UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the City of Manila, Part I.

Judge Smith.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, and FAUSTINO AGUILAR, Defendants.

Libel.

Order of Transfer of Cause to Another Judge.

A substantial number of important criminal cases being assigned for trial in this branch of the court for the next three weeks, and the Judge presiding over this criminal sala being obliged to undergo a daily surgical operation for several days yet to come, and being advised by Dr. E. H. Stafford that the said judge should not engage in any work whatever at the present time, and it being evident that said judge cannot continue to work over hours for a period of at least three weeks from this date; and the defendants herein being entitled to a fair and speedy trial, which in all probability could not be granted if said cause were tried before said judge; and the judge now presiding over this sala having been prosecuting attorney during the year 1905, and as such prosecuting attorney having instituted in this court a certain criminal cause (libel) entitled: United States vs. Fernando Guerrero, Martin Ocampo and Lope K. Santos, docket No. 2215, and having sat in the trial of said cause as
53 such prosecuting attorney, and two of the defendants, to wit, Martin Ocampo and Lope K. Santos, in the present cause, having been defendants in the aforesaid criminal cause No. 2215, and it being charged here that the article complained of was published by and in the newspaper called "El Renacimiento", being the same newspaper with which the defendants in said cause, docket No.

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2215, were alleged to be connected; and, while said judge presiding over this sala has no prejudice or illfeeling whatever against the defendants or any of them, still to contribute to the continued high standing of this court and to promote the ends of justice:

It is ordered: (*a*) That said cause and all further proceedings therein be transferred to his Honor, A. S. Crossfield, one of the regular judges of this court; and, (*b*) that the defendants each and all together with their counsel, appear before said judge at eleven o'clock forenoon of the 14th day of November, 1908, for such further orders and proceedings as may seem just, legal and proper to said last mentioned judge presiding over one of the branches of this court.

Manila, P. I. November 14, 1908.

CHAS. H. SMITH, *Judge.*

I hereby certify that the above order was read to the accused accompanied by their attorneys in open court on this 14th de November, 1908, at 10:05 a. m.

FELIPE BUENCAMINO, JR.,
Acting Assistant Clerk.

54 Thereafter and on December 2, 1908, the defendant Teodoro M. Kalaw asked for the appointment of assessors. His petition was granted and the necessary citations issued to the persons designated to serve as such.

Thereafter and on the 8th day of December, 1908, the defendant Teodoro M. Kalaw filed a motion under oath stating that his defence consisted in proving the truth of the matters contained in the article alleged to be libelous; that the witnesses he intended to produce lived in some of the distant provinces of the archipelago; that although the defendant was satisfied of the truth of the matters claimed to be libelous he did not know the names of the persons who were in possession of the necessary data; that defendant had exercised all due diligence in procuring the necessary evidence to support his defence; that defendant believed that there existed some documentary evidence which could not be produced unless he was allowed more time to secure same. Wherefore the defendant prayed for a continuance of the trial of his case to the latter part of February, 1909.

Thereafter and on the 10th day of December, 1908, the defendant Teodoro M. Kalaw filed a second motion under oath to the same effect, praying for a continuance of the trial of his case to the latter part of February, 1909, upon the further ground that his defence also consisted of proof of the existence of good motives and justifiable ends and of the truth of the matters contained in the article in question; that although the defendant was satisfied of the existence of such good motives and justifiable ends, as well as of the
55 truth of the matter claimed to be libelous, he did not know the names and addresses of the persons who were actually in possession of the necessary information; that such persons, however, existed and defendant expected to call them as witnesses in order to establish his defence; that to the best of his information and be-

fief, the majority of said witnesses lived in some of the remote provinces of the archipelago; that said witnesses would testify as to the good motives and justifiable ends of the publication, as well as the truth of the matters contained therein; that the defendant could not specify exactly the facts as to which each of the said witnesses would testify; that the defendant had exercised all due diligence in securing the testimony of said witnesses, but so far without success; and that defendant believed that there also existed certain documentary evidence sufficient to establish the truth of the alleged libelous matter.

Thereafter and on March 8th, 1909, the trial court rendered its decision as to the defendant Teodoro M. Kalaw, as follows:

56 UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the City of Manila, Part IV.

Before Judge Crossfield.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES and FAUSTINO AGUILAR, Defendants.

Sentence.

This case came before the Court for the separate trial of the defendant, Teodoro M. Kalaw, upon a complaint charging the defendants with being the proprietors, owners, directors, writers, managers, administrators, printers and publishers, in the city of Manila, P. I., of a certain newspaper known as "El Renacimiento," and that on the thirtieth day of October, nineteen hundred and eight, there was published in said newspaper an article (copied at length in the complaint) with malicious intent to injure one Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, and to impeach his honesty and reputation as a man and as an official of the government of the Philippine Islands, and that said newspaper with the article stated therein was regularly circulated in the regular daily issue of said newspaper.

57 Mr. L. M. Southworth, Assistant Prosecuting Attorney for the City of Manila, appeared in behalf of the Government; Srs. Felipe Agoncillo, De la Rosa, Fernando Salas and Ramón Diokno on the part of this defendant, Teodoro M. Kalaw. The defendant, Teodoro M. Kalaw, was present in court. Every opportunity was given the defense at the trial to present any testimony which might be procured which would in any way have any tendency to justify or establish the truth of the article complained of in the complaint.

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Counsel for the defendant exhausted every avenue in their effort to establish a sufficient defense.

The facts as presented by the evidence on the part of the Government are:

That on the 30th day of October, 1908, there was published in "El Renacimiento," a daily newspaper published in the city of Manila and circulated throughout the Philippine Islands, the following article:

"MANILA, 30 *de Octubre de* 1908.

Editorial.

Aves de Rapiña.

En la extension del globo, unos han nacido para comer y devorar, otros para ser comidos y devorados.

Una y otra vez estos ultimos se han agitado, tratando de rebelarse contra un orden de cosas en que son presa y pasto para la voracidad insaciable de los primeros. Alguna vez han tenido suerte ahuyentando lejos á los comedores y devoradores, pero en la mayor parte de las veces no se ha conseguido más que un cambio de nombre ó de plumage.

En todas las esferas de la creación, la situación es la misma, la relación entre unos y otros es la que dictan el apetito y la fuerza para saciarlo á costa del prójimo.

58 Entre los hombres, es facilisimo observar el desarrollo de este fenómeno dicho. Y por alguna razón psicológica los pueblos que se creen poderosos han tomado por emblema las criaturas más fieras y más dañinas: ora es el leon, ora es águila ó la serpiente. Unos lo han hecho por un secreto impulso de afinidad, otros por efecto de una simulación, de vanidades infatuadas aparentando lo que no son ni pueden ser jamás.

El águila, simbolizando libertad y fuerza, es el ave que ha encontrado mas adeptos. Los hombres, colectiva ó individualmente, han querido copiar ó imitar al ave más rapáz, para triunfar en el saqueo de sus semejantes.

Hay hombres que, además de ser á guilas, reunen en si las caracteristicas del buitre, del lobo y del vámpiro.

Subiendo á las montañas de Benguet para clasificar y medir cráneos de igorrotes y estudiarlos y civilizarlos y sorprenderlos al vuelo, con ojo de ave de rapiña, donde se encuentran los grandes yacimientos del oro, la presa oculta entre los montes solitarios, para explotarselos despues gracias á facilidades legales hechas y derogadas al antojo, pero siempre en beneficio propio.

Autorizando á despecho de leyes y ordenanzas una matanza ilegal de ganado enfermo, para sacar beneficio de la carne infecta y podrida que el mismo estaba obligado á condenar de su posición oficial.

Presentándose en todas las ocasiones con el señorío del sabio que consume su vida en los misterios del laboratorio de ciencia, cuando toda su labor científica se reduce á desecar insectos é importar huevas de peces como si los peces de este pais fueran menos

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nutritivos y menos ricos, de tal modo que valiera la pena de sustituirlos con especies venidas de otros climas.

Dando un impulso admirable al descubrimiento de veneros de riquezas en Mindoro, en Mindanaw y demás puntos vírgenes del Archipiélago con el dinero del pueblo y con el pretexto de bien público, cuando en rigor se trata de poseer todos los datos y la clave de la riqueza nacional en provecho personalísimo como se demuestra por la adquisición de inmensas propiedades registradas con nombres ajenos.

Promoviendo por medio de agentes y consocios secretos la venta á la ciudad de terrenos sin valor por cantidades fabulosas que los padres de la ciudad no se atreven á rehusar por el temor de disgustar á quien va detrás de la moción, y que no rehusan por lo que les conviene.

Patrocinando la concesión de hoteles en sitios terraplenada con la perspectiva de enormes utilidades, á expensas de la sangre del país.

Tales son las características del hombre que es á la vez águila que sorprende y devorar, buitre que se solaza en las carnes muertas y putrefactas, lobo que aparenta una omnisciencia petulante y vampiro que chupa en silencio la sangre de la víctima hasta dejarle exangüe.

Estas aves de rapiña son las que triunfan. Su vuelo y su dirección jamás se ven detenidos.

Quien los detendrá?

Unos participan del botín y del saqueo. Otros son tan débiles para levantar la voz de protesta. Y otros intervienen en la desconsoladora destrucción de sus propias energías é intereses.

Y entonces surge, terrorífica, la leyenda inmortal:

Mane, Tecel, Phares."

And this publication was circulated throughout the Philippine Islands by manual delivery of said newspaper and the sending of it through the mail to subscribers.

That prior to the above date, and on October 27th 1908, there was published in the same newspaper an article entitled "Habladurías del Vulgo Son," which is as follows:

"Dícese que algunos abogan por que sea nombrado para formar parte de la Hon. Comisión de Filipinas un hombre de negocios.

Pero dícese tambien que ya figura en el seno de ese cuerpo colegislador un hombre de negocios, sin contar al comisionado Forbes que además de ser un distinguido clubman y un brillante sportman, es un experto en materia de ferrocarriles, navegacion, comercio, etc.

Eso debe ser verdad, porque el hombre de Boston está ausente y sin embargo, * * * there is something rotten in the Ayuntamiento.

Lo que huele á podrido es la carne de las veintiun vacas gordas de Lack and Davis, W. Dean and Co., Limited."

And this publication was circulated throughout the Philippine Islands by manual delivery of said newspaper and the sending of it through the mail" to subscribers.

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That on October 26th, 1908, there was published in the same newspaper an article entitled "Violacion de las Ordenanzas. Autoridadas, Complicadas, Habremos Comido Carne Infectada?" in which, after discussing an alleged illegal slaughtering of cattle by Lack and Davis, the following statement is made:

60 "It results clearly that Mr. Worcester is responsible for the violation, but inasmuch as he is the Secretary of the Interior the Board preferred to ignore the matter.

* * * * * * *

How can they expect to put this capital in a sanitary condition when the laws governing importation and sanitation are so boldly violated, whenever it suits the business, by the very authorities called upon to see the enforcement of the law or of the ordinance.

Nothing will happen to Lack and Davis because they are being shielded by great men. The Prosecuting Attorney will have nothing to do with them, notwithstanding the evident violation committed. That which is of importance is to satisfy Worcester."

And this publication was circulated throughout the Philippine Islands by manual delivery of said newspaper and the sending of it through the mail to subscribers.

From the facts gleaned from these articles another fact must be concluded:

The article of October 27th, 1908, refers to a business man on the Philippine Commission and, after eliminating Commissioner Forbes on account of his absence, states:

"There is something rotten in the Ayuntamiento. What smells rotten is the meat of the twenty-one fat cows of Lack and Davis, W. Dean and Co., Limited."

Dean C. Worcester is in all probability intended by the name "W. Dean."

In the article of October 26th, 1908, which clearly refers to the same matter as that of the article of October 27th, 1908, Mr. Worcester, as Secretary of the Interior, is declared responsible for the violation of ordinances.

61 These two articles are not a part of the libel charged, and can only be used to indicate who the libelous article charged in the complaint refers to.

In the article charged as libelous published on October 30th, 1908, as hereinbefore stated, there appears the following:

"There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire."

And subsequently:

"Authorizing, in spite of laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat, which he himself was obliged to condemn by virtue of his official position."

This clearly refers to the same matter appearing in the articles published in "El Renacimiento" of October 26th and October 27th, 1908, as before stated, and naturally must refer to the same person therein referred to.

Further this article says:

"Ascending the mountains of Benguet to classify and measure the skulls of the Igorot, and study and civilize them," etc.

"Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life * * * and importing fish eggs," etc.

"Giving an admirable impulse to the discovery of wealthy veins of ore in Mindoro," etc.

"Promoting through secret agents and partners the sale to the city of worthless lands at fabulous prices," etc.

"Patronizing concessions for hotels on filled-in land, with the prospect of enormous profits, at the expense of the blood of the people."

"Such are the characteristics of the man who is at the same
62 an eagle who surprises and devours," etc.

The evidence discloses:

That it has been and is the duty of the Secretary of the Interior, Mr. Worcester, also a member of the Philippine Commission, to study the Igorot of Benguet, and other mountain tribes of the Philippine Islands, with a view to their civilization and better government;

That he is — scientist, and has imported fish eggs into the Philippine Islands, the only living fish eggs ever imported;

That the Bureau of Mining being under his supervision, it is part of his official duty to promote the discovery of ore in all parts of the Philippine Islands;

That in his official capacity he had to do with the sale of certain land in the city of Manila;

That in his official capacity, as member of the Philippine Commission, he was interested in the erection of a hotel in Manila, and in connection with the other Commissioners contemplated a concession of filled-in land known as the Luneta extension in the city of Manila;

That all of these facts, just hereinbefore stated, were within the knowledge of any person who desired to inform himself, and were a matter of public notoriety.

Taking the different statements made in the article separately it might be difficult to determine just to whom some of them were intended to apply; while there can be no doubt as to whom other statements in the article were applicable.

The attempt on the part of the defendant to demonstrate
63 that the whole article was allegorical and was directed against oppression in general by stronger powers of weaker, and against exploitation of the Philippine Islands by foreigners, cannot be entertained in the light of the article itself. It was clearly directed against some person or persons upon whom the writer wished to place odium.

Considering all the statements made in the article complained of, the facts and circumstances appearing from the evidence, the names of the persons mentioned in the articles published on October 26th and October 27th, 1908, the matter therein referred to, all into consideration, and the other conclusion of fact before referred to, which must be arrived at, is that Dean C. Worcester, a member of the

Philippine Commission and Secretary of the Interior of the Philippine Islands, is the "man" intended, "who is at the same time an eagle who surprises and devours," etc., mentioned in the article published as before stated on October 30th, 1908, and against whom it was directed.

The defense attempted to show that the article might apply to other persons than Mr. Worcester, but was unable to do so further than to show that other persons had gone up into the mountains of Benguet to study the Igorots, and that other persons had made explorations in search of rich veins of ore, and that the Government of the Philippine Islands had paid for the importation of fish eggs into the Philippine Islands.

64 There was an attempt on the part of the defense to show that the article was true, and much time was consumed in taking evidence in this behalf, and while some of the statements in the article were admittedly true, there was entire lack of evidence that the person referred to in the article had ever, as stated therein, ascended the mountains of Benguet "and to espy in his flight, with the eye of a bird of prey, where the large deposits of gold, the prey concealed amid the lonely mountains, and appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit," or, "authorized despite laws and ordinances and illegal slaughtering of diseased animals in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position," or, "by giving an admirable impulse to the discovery of wealthy lode in Mindoro and other virgin regions of the Archipelago, with money of the people and under the pretext of public good, when the motive was to possess all data and the key to national wealth for his own essentially personal benefit, as is shown by the acquisition of immense property registered under the names of others," or, "promoted through secret agents and partners the sale to the city of worthless land at fabulous prices," or, "patronized the concessions by hotels of filled-in land with the prospect of enormous profit, at the expense of the blood of the people."

There was an attempt to justify the article on the ground that wrongs had been committed by some one in authority which
65 should be righted, and that the article was intended by calling attention to the wrongs to have them righted, but the attempt failed utterly. No wrong or evil, as stated in the article was found to exist.

In the attempt to justify the defendant attempted to show that the article was prepared and pub-ished upon information received after investigation made, and because the subject matter of some portions of it had appeared in other newspapers, which were taken to be true, but the evidence in this behalf did not establish the truth of any libelous statement in the article, or that the article was justified upon the information at hand when it was published, as appears from the evidence.

This defendant, Teodoro M. Kalaw, was undisputedly the director or manager of the newspaper "El Renacimiento," and he pre-

pared all editorials or supervised their preparation, though it was not shown that he personally prepared the article complained of, and under his direction "El Renacimiento" was printed and published at the time when the article complained of appeared in its columns.

The conclusions are:

That the article published in the newspaper "El Renacimiento" on October 30th, 1908, as charged in the complaint, is a malicious defamation tending to impeach the honesty, virtue and reputation of Dean C. Worcester, a member of the Philippine Com-
66 mission and Secretary of the Interior of the Philippine Islands, and is a libel;

That the article being published, as appears from the showing made by the defense, upon the facts adduced by it at the trial, the malice of its statements is only accentuated;

That no justifiable motive for publishing the article has been shown, neither has any evidence of its truth been given;

That it has not been shown that this defendant, Teodoro M. Kalaw, is the author of the article;

That this defendant, Teodoro M. Kalaw, as director and editorial manager of "El Renacimiento," is responsible for any article appearing therein, and thus was responsible for the publication of the article complained of;

That while this defendant, Teodoro M. Kalaw, is not shown to be the author of the article complained of, he is chargeable with its publication, under the provisions of Section 3442 of the "Compilation of the Acts of the Philippine Commission," which is as follows:

"Every author, editor, or proprietor of any book, newspaper or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial as fully as if he were the author of the same" as an editor of "El Renacimiento."

I therefore find this defendant, Teodoro M. Kalaw, guilty as charged in the complaint, and sentence him to nine months imprisonment, and to pay a fine of three thousand pesos, and one-fifth of the costs of this action.

In case of insolvency and non-payment of the fine im-
67 posed, the said defendant will suffer subsidiary imprisonment at the rate of two and a half pesos per day until the fine is satisfied according to law.

This sentence will be executed at Bilibid Prison, Manila, P. I.

Manila, P. I., March 8th, 1909.

(S'g'd) A. S. CROSSFIELD, *Judge*.

The assessors who sat with me in the trial of this case entirely agreed with the foregoing sentence.

Manila, March 9th, 1909.

(S'g'd) A. S. CROSSFIELD, *Judge*.

From the foregoing decision the defendant Teodoro M. Kalaw duly appealed to the Supreme Court of the Philippine Islands.

	Direct.	Cross.
James Francis Smith....	2	
Dean C. Worcester.....	17, 322, 340	26, 39, 41, 331, 337
Newton W. Gilbert.....	55	60
C. P. Shuman.....	72	
Santiago Perez.....	73	
Justo Lukban.....	75	
Pedro Aunario	78	
Felix M. Roxas.....	81	
Frederick O'Brien.....	87	91
Ricardo Aguado.....	91, 208	
José Maria Romero y Salas	93, 191, 202	196, 203
José Flameño	96, 155	101
Isidoro Loyzaga.....	101	
Charles P. Jarman.....	104, 117	109
Joaquin Pellicena Camacho	109, 213	110, 218
Constantino Caballero....	117, 119, 121	119, 120
E. S. Cromwell.....	122, 295	298
Guillermo Buenaventura.	124	127
Estanislao Bernardo	131	133
Antonio Hidalgo.....	135	137
Rafael Abad	138	
Quintin Vilar.....	139	
Ambrosio Alban.....	143, 154	148
William H. Grant.....	156	
Emigdio Octaviano.....	157	161
Enrique Altavas	164	
L. Elzingre Dumas.....	166	
Thomas Cary Welch.....	170	171
Pedro Picornell.....	172	
Manuel Ravago.....	172	182
Guy S. Lane.....	188	
Miguel Velasco.....	204	
Pablo B. Herrera.....	206, 244	247
Ricardo Aguado	91, 208	
Fernando Maria Guerrero.	221	226
David P. Barrows.....	227, 298	230
Arcadio Arellano	231	
Vicente Rodriguez.....	235	
N. M. Saleeby.....	237, 299	240
W. H. Clarke.....	241, 243	242, 243
Mateo Carantes	249, 258	256
Lucio Almasan.....	259	262
Vicente Balpiedad.....	263, 272	269
Carlos Ambas	273	
Teodoro M. Kalaw.....	275	284
T. R. Flack.....	294	

George P. Ahern	299	
A. O. Zinn	301	303
Charles H. Sleeper	304, 312	310, 313
George H. Guerdrum	313	315
M. A. Clarke	317	318, 319
Charles M. Conner	320	321

69 . UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part IV.

Before Judge Crossfield.

Criminal Case No. 4295.

THE UNITED STATES, Plaintiff,
vs.
TEODORO M. KALAW et al., Defendants.

Proceedings.

DECEMBER 5TH, 1908.

Upon calling the case for trial counsel for the defendant, Teodoro M. Kalaw, asked for a separate trial, which was granted by the Court.

Counsel for the defendant, Teodoro M. Kalaw, asked that assessors be appointed to sit with the Court in the hearing of the trial of the case, whereupon Srs. Ponciano Reyes and Geronimo José were duly sworn in to act as such, according to law.

Mr. L. M. Southworth, Assistant Prosecuting Attorney for the City of Manila, appeared in behalf of the Government; Srs. Felipe Agoncillo, Roberto Moreno, Fernando Salas and Ramón Diokno on the part of the defendant. The defendant was also in court.

Mr. SOUTHWORTH: Inasmuch as the Governor General is about to depart on a trip, we desire in order to save him some inconvenience to take his testimony first, although it may be somewhat out of order.

The COURT: You may do so.

70 JAMES FRANCIS SMITH, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. James Francis Smith.
Q. Where do you reside?
A. My residence is at San Francisco, but at present I am at the Malacañan.
Q. What is your official position?

A. At present Governor General of the Philippine Islands, by profession I am a lawyer.

Q. Do you know Commissioner Dean C. Worcester?

A. I do.

Q. How long have you know him?

A. Since 1901.

Q. Does Commissioner Worcester fill any official position in the Government of the Philippine Islands?

A. He is a member of the Philippine Commission, and Secretary of the Interior.

Q. How long has he been connected with the Government as an official?

A. Since 1900 he has been a member of the Civil Government, and has continued to be a member since its reorganization July, 1901.

Q. Are you familiar with Commissioner Worcester's official acts and duties in the Philippine Islands?

A. Reasonably so.

Q. I will show you what purports to be an editorial in the newspaper El Renacimiento of October 30th, 1908, which I desire
71 to have marked Exhibit A. in this case, and will ask you to state whether or not you have ever seen that article before?

Sr. AGONCILLO: I object to the question on the ground that the article has not been properly identified, and on the further ground that the question calls for an opinion of the witness.

The COURT: The objection will be overruled for the present, it is true that the article has not been identified, but that may be done later.

Sr. AGONCILLO: Exception.

A. I have.

Q. Have you read that editorial?

A. I read it the day after its publication, or the day after that, and also several times since then.

Q. Directing your attention particularly to the paragraph commencing with the word "Subiendo" and ending with the word "propio", I will ask you if you know of any relation or connection which Commissioner Dean C. Worcester has with the matters contained, and if so please state what that relation or connection is?

Sr. SALAS: Objected to for the same reason as stated by my companion.

The COURT: Objection overruled.

Sr. SALAS: Exception.

A. Mr. Worcester, as Secretary of the Interior of the Philippine Government, is obliged by law to visit the wild and non-christian people of the islands, and amongst them to visit the Igorotes of Benguet, which is a mountain province. As Secretary of the In-
72 terior he has under his departmental control the Bureau of Science, in which is located the Division of Ethnology, the duty of which division is to make studies of the racial characteristics

and customs of the wild people of the islands, for the purpose of furnishing data which may facilitate in their government, and as far as possible give some idea of their early history. Among other things which are done by this division is that of measuring the craniums of the Igorotes, and I know that Mr. Worcester has always taken a special interest in the ethnology of these people, and also in the cranium measurement of these people as a means of identifying their racial antecedents and history.

Q. Calling your attention to the next paragraph of Exhibit A., I will ask you to state whether or not you know of any connection or relation that Commissioner Worcester has had with the matters therein referred to, and if so please state what that connection or relation is?

Sr. SALAS: Same objection.
The COURT: Objection overruled.
Sr. SALAS: Exception.

A. As Secretary of the Interior Mr. Worcester has departmental charge of the Bureau of Agriculture and of the Bureau of Health. The Bureau of Agriculture is charged with the special duty of preventing the spread of contagious or infectious diseases among the cattle of the islands, and as such determines whether
73 cattle infected with disease shall or shall not be used for human food, and killed for that purpose. The killing of the animals for food involves the question of the danger of communicating the disease to our animals, and also the question of whether the meats of such animals could be used for human food without danger to the public health. Secondly, when questions of this kind arise they are usually decided by the departmental chief, because both the Bureau of Agriculture and the Bureau of Health are concerned in it, as is also here in Manila the City of Manila, which has fixed by ordinance a place in which cattle to be used for human food shall be slaughtered.

Q. Calling your attention to the next paragraph of this article Exhibit A., I will ask you to state whether or not you know of any connection or relation which Commissioner Worcester has had with the matters therein referred to, and if so please state what that connection or relation is?

Sr. SALAS: Same objection.
The COURT: Same ruling.
Sr. SALAS: Exception.

A. Mr. Worcester is himself a scientist, and as Secretary of the Interior takes a special interest in scientific work of all kinds. He is well known in the City of Manila as a scientist, and as being the official of the Government who takes a vital interest in all
74 scientific work of the Government. He also is the only official of the Government who charged himself with the importation of fish eggs on one occasion to the Philippine Islands, looking to the stocking of the streams of Benguet Province with fish. The food supply of the Igorotes of Benguet is very scarce,

the principal element being camotes, aided and assisted a little by rice and cattle, and Mr. Worcester deemed it wise to add to their food supply by furnishing them fish in their province.

Q. Calling your attention to the next paragraph of this article, Exhibit A., I will ask you to state whether or not you know of any connection or relation which Commissioner Worcester bears to the matters therein referred to, and if so please state what that connection or relation is?

Sr. SALAS: Same objection.
The COURT: Same ruling.
Sr. SALAS: Exception.

A. This paragraph, as I understand it, refers to two sources of riches in the islands, one the riches to be derived from mining, and the other from the agricultural resources of the islands. As I have stated before, the Bureau of Agriculture is under the departmental control of Commissioner Worcester, and the division of mines in the Bureau of Science is also under his departmental control,
75 and it is his special duty to promote and encourage mining and to develop the agricultural and mining resources of the islands.

Q. Calling your attention to the next paragraph of this article, Exhibit A., I will ask you to state whether or not you know of any connection or relation which Commissioner Worcester has had with the matters therein referred to, and if so please state what that connection or relation is?

Sr. SALAS: Same objection.
The COURT: Same ruling.
Sr. SALAS: Exception.

A. Dean C. Worcester is the only official of the Insular Government, of whom I am aware, who personally negotiated as an official of the Government the purchase of certain land, part of which was afterwards transferred to the Muncipal Government. There were some lands adjoining the Exposition Grounds which were either owned or under the control of Mr. Jones, which land it was necessary to secure in order to give sufficient space to the Bureau of Science, general hospital and a medical school. Mr. Worcester negotiated that purchase, and subsequently part of the same land was transferred to the city of Manila for purposes of a street. This was done openly and publicly and without concealment. At the beginning it may have been that some person sounded Mr. Jones as to whether he was willing to sell and for what price and such sort of things, without letting him know that the Government intended to purchase, but all the negotiations to the final conclusions
76 were public, and were well known to all the people of Manila.

Q. Directing your attention to the next paragraph of that article, Exhibit A., I will ask you to state whether or not you know of any relation or connection which Commissioner Worcester has had with the matters therein referred to, and if so please state what that connection or relation has been?

Sr. SALAS: Same objection.
The COURT: Same ruling.
Sr. SALAS: Exception.

A. This paragraph clearly refers to the setting apart by the Philippine Commission of a certain tract of land which was filled in and which is known as the Luneta Extension, set apart for the purposes of a hotel on the site. This setting apart of this land for that purpose was urged very strongly by Mr. Secretary Taft during his visit, and was approved by Mr. Taft for the purposes of a hotel, and in addition he urged upon me, as Governor General, the necessity of giving all of the Government aid and encouragement which I could to the erection and establishment of a modern hotel in the city of Manila. He called attention from his personal experience to the great loss which the city suffered by reason of the bad reputation which the city had for its hotels, and that that bad reputation deterred a great many tourists and others from coming to the city of Manila, and their failure to come was a great disadvantage to the city and to its business men.

Q. I will ask you to state whether or not these matters about which you have just testified, in relation to these various para-
77 graphs from this Exhibit A., are matters of common knowledge in the city of Manila, or the Philippine Islands?

Sr. SALAS: Same objection.
The COURT: Same ruling.
Sr. SALAS: Exception.

A. I do not know of a single one of the facts which I have gone over which is not well known to all the citizens of Manila, and to many citizens residing in other parts of the archipelago.

Q. Taking into consideration your knowledge of the official acts and official duties of Commissioner Worcester in the Philippine Islands, in connection with the various paragraphs from this Exhibit A., about which you have just testified, and in connection with the whole of the editorial marked Exhibit A., I will ask you to state whether or not there is any other man or official in the Philippine Islands to whom this article, Exhibit A., could apply, except Mr. Dean C. Worcester?

Sr. SALAS: Objected to as calling for an opinion of the witness.
The COURT: Objection overruled.
Sr. SALAS: Exception.

A. This article, Exhibit A., considered as a whole and all the actual facts stated in this article jointly considered, could apply to but one person in the Philippine Islands, or anywhere else to my knowledge, and that is Mr. Dean C. Worcester.

Mr. SOUTHWORTH: You may take the witness.

78 Cross-examination by Sr. AGONCILLO:

Q. Is it not true that you know of many persons who ascended the mountains of Benguet?

A. It is a fact.

Q. Is it not true that there are deposits of gold in the mountains of Benguet?

A. That is also true.

Q. Can you state whether or not there are companies or private individuals that possess as property some mines in the mountains of Benguet?

A. There are both private individuals and companies who are owners of mines in Benguet Province.

Q. Will you kindly inform the court as to whether or not you have seen personally that Commissioner Worcester has measured the skulls of Igorotes?

A. No sir, I have seen him take pictures of their heads, but I have never seen him measure them.

Q. But you saw him classifying them?

A. Oh yes, he classified them to a certain extent, so far as his ethnological experience would permit him to go. He has taken photographs of types of nearly all the wild tribes in the islands, and has them set apart and classified according to their tribal relations.

Q. So then you have no personal knowledge in regard to these two facts which I have just mentioned?

A. I *had* no personal knowledge. He has directed the measurement of heads, and has sought me frequently for permission to send Mr. Miller and other people into the country for that purpose, and he has also asked me to furnish people coming to the Islands
79 facilities in order to make their visit profitable, scientists interested in ethnology and the measurement of craniums.

Q. So there are also some other persons who make studies of the Igorotes of Benguet, besides Commissioner Worcester?

A. Oh yes.

Q. Will you kindly state to us whether or not prior to American occupation there existed a military government, a parish priest and a school in Benguet?

Mr. SOUTHWORTH: I object to that on the ground that it is ancient history, and has nothing to do with the present case.

The COURT: Objection sustained. I do not know about ancient history, but it is incompetent.

Q. Don't you know of other persons also who have made efforts in regard to the Igorotes which tended to their civilization?

A. To a certain extent yes, and I know it historically.

Q. I would like to know the range of that work to a certain extent?

A. I know historically that an attempt was made to christianize the Igorotes of Benguet, I do not know of anything further which was done looking towards their civilization, however.

Q. Can you tell us whether or not there was really a killing of cattle, which were diseased and which were imported from Hongkong, in the Bay of Manila?

A. It is generally admitted and generally known that there was a cargo of cattle which came in with foot and mouth disease, and which were killed by Lack & Davis in the Bay of Manila.

80 Q. Do you know on what date that killing took place?

A. To the best of my recollection it occurred in the month of October, it may have been about the middle, I am not certain, and do not pretend to say the exact date.

Q. Can you tell us where they carried the meat of these infected cattle which were killed in the Bay of Manila?

A. I suppose, I know only by supposition, it was carried to the place of Lack & Davis.

Q. Do you know where the store of Lack & Davis is?

A. It is in the city of Manila, I think I could bring you to it, but I could not tell you the street. They have a cold storage place, and formerly rented from the Government, if not now, a cold storage place in the Ice Plant.

Q. Does there exist here in the city of Manila a laboratory of science?

A. Yes sir, there does.

Q. Can you tell us what kind of work is done in that laboratory?

A. All classes of scientific work required by the Government, among others the making of vaccine and this serum for cattle, they examine the specimens sent by physicians for the purpose of determining the nature and character of the disease of which a sick person was suffering, and they are of frequent aid to medical men in making diagnoses and studies of all classes of tropical diseases, and they also attend to the making of assays.

Q. Can you tell us whether or not Commissioner Worcester consumed all his life in that laboratory of science?

81 A. Neither he nor any person else does that.

Q. Was the importation of fish eggs into these islands exclusively the work of Commissioner Worcester?

A. He originated the idea, and urged upon the Commission the advisability and indeed its entire wisdom and its necessity.

Q. Did the Commission approve of that idea?

A. Very much.

Q. Was there a law passed authorizing that importation?

A. The record will show best, but it is probable you will find a resolution approving of it. At all events this is certain, that there must have been an appropriation to cover the expenses, which of course had to be passed by the Commission.

Q. So then the Government has intervened in regard to this matter?

A. Mr. Worcester acted as Secretary of the Interior, and it was his special duty to aid in the development of fisheries or any other industry of the country, and more than that it was his special duty to develop fish in the provinces which did not have any, and where the food supply was short.

Q. But did the Government intervene in the importation of these fish eggs?

A. Yes, he acted as an official of the Government, he originated the idea as an official of the Government, and he carried it into effect as an official of the Government, if I remember it.

82 Q. Can you tell the Court whether or not you know of Commissioner Worcester possessing any real property in the provinces of Mindoro and Mindanao, or in other provinces?

A. I know of no property which Mr. Worcester possesses or owns, except in the province of Benguet, where he is the owner of a lot which he purchased at public auction and upon which he erected a house. He has a house in the city of Manila which he does not own, but rents, another house for recreation which he owns, in Paranaque or Pasay Beach, and which is on rented land, so far as I know.

Q. But as a matter of fact he does not possess any property in the name of others?

A. I have heard statements made by irresponsible persons that that was so, but there has never been the slightest evidence of any kind furnished to me that he is the owner of such property in the name of others, and when that statement has been made in my presence, I have asked the people for facts to justify the statement, and nobody up to the present has been able to justify the statement.

Q. It is a fact, is it not, that there was land sold to the city?

A. Transferred to the city, I do not know how the document was worded.

Q. Can you tell us whether or not some secret agents took part in this sale?

A. The matter of the purchase and sale of the property to
83 which you refer was conducted publicly, openly and notoriously to a conclusion, with the exception probably that at the very beginning Mr. Jones may have been sounded as to whether or not he would sell the property, and at what price, by some person who did not make it known to him that the Government wanted to buy it; but everybody in the city of Manila knew that that transaction was carried through, that is everybody who sought to make himself acquainted with current events of the Government, the documents were all public and accessible to anybody, newspapers and everybody else.

Q. Does that sale refer to land of the Insular Government or private land?

A. Originally the land in question belonged to a private party, and it was purchased by Commissioner Worcester for the Insular Government, and part of it was subsequently transferred to the city for a street.

Q. If I am not mistaken it seems to me that you have stated that the idea of the concession of a hotel site on filled in land came from Mr. Taft?

A. The insistance on something being done came from Mr. Taft. Our first negotiations had more or less failed, and we were in a state of more or less indifference when he came here, and he complained very strongly of our attitude in that matter, and I think with very great reason. I think it is a burning shame that this city has not a hotel. This is familiar among all travelling people as a city you cannot visit, and in which you cannot find a
84 hotel where you can have the ordinary comforts of a modern hotel. There is hardly a day that visitors come to Manila

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but what some complaint is made and our attention called to the fact that hundreds of these have been deterred from coming to the Philippine Islands. Public meetings were held on this subject, and there was no secrecy about it. Everybody was in accord with the proposition that we ought to have a modern hotel, I say everybody that had common sense.

Q. So in case that sale of land has been concluded, the Insular Government is the only one to make that concession or sale?

A. We passed a law which gave power to the city of Manila to effectuate this transfer for a hotel. Originally this land belonged to the Insular Government, the fact of filling it in did not change its character until the transfer had been made to the city. The city paid for a bulk-head which went around ahead, and as a result the title to this property was passed to the city for park purposes, and hotel and club purposes.

Q. So the property of the filled in land now belongs to the city?

A. Yes, that is true, and the city does its part in setting apart that land for hotel purposes. The erection of a hotel on the property, however, is a matter in which the Insular Government is directly interested.

Q. And the concession of a hotel site has not yet been carried into effect?

85 A. It has not, that is so far as the putting up of a hotel is concerned. The land is set apart, but the Insular Government insists that the people who are to erect this hotel must put up a certain amount of their own money before the Government will take any of their bonds and advance money on the security of the building.

Sr. AGONCILLO: That is all.

The hearing was then adjourned until Monday, December 7th, 1908, at ten o'clock a. m.

DECEMBER 7TH, 1908.

Pursuant to adjournment the case was called this a. m., with the same appearances.

DEAN C. WORCESTER, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?

A. Dean C. Worcester.

Q. Where do you live?

A. At No. 16 Calle Nactajan, Manila.

Q. What official position do you hold, if any?

A. Member of the Philippine Commission, and Secretary of the Interior of the Philippine Islands.

Q. How long have you been in the Philippine Islands?

A. I have spent nearly thirteen years in the Philippine Islands.

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86 Q. When did you come over for the first time?
A. In August, 1887.
Q. How long did you remain in the Philippine Islands on that trip?
A. About one year.
Q. When did you return to the Philippine Islands again?
A. In 1890.
Q. How long did you remain here at that time?
A. About three years.
Q. When did you return to the islands again?
A. March 5th, 1899.
Q. In what capacity did you return to the Islands?
A. As member of the First Philippine Commission.
Q. Have you filled other official positions in the Philippine Islands?
A. Yes, I was member of the Second Philippine Commission, which arrived here June 3rd, 1900, and was appointed Secretary of the Interior when the executive departments of the Government were established, and I have held both of these positions continuously ever since.
Q. Please state briefly the extent of your travels in the Philippine Islands?
A. I have visited all of the larger islands of the Philippine Islands, a very large number of the small and comparatively unimportant islands, every province, a large number of the principal municipalities and barrios, and I have travelled quite extensively in the uninhabited portions of the islands, and in those portions which are inhabited by non-Christians.
87 Q. Please state briefly the extent of your official relations with the people of the Philippine Islands, the extent to which you have come in contact with them officially?
A. As member of the First Philippine Commission, through the possession of some knowledge of the Spanish language, and through my previous acquaintance with the people throughout the islands, I was brought into official contact with a large number of persons who had fled or come to Manila for protection, or who resided here. As Secretary of the Interior I have charge of the Bureaus of Health, Forestry, Science and Agriculture, and these bureaus carry on work and have their representatives throughout the islands. In connection with the work of these bureaus I am brought into more or less official contact with officers of the provinces and municipalities, and with private citizens throughout the islands. I have travelled through the islands in company with the other members of the Second Philippine Commission, at the time Civil Government was established, and at that time came into personal contact with a very large number of persons throughout the islands. Finally, in my capacity as the officer who has control of the acts of the Governors and Provincial Boards relative to non-christians throughout the islands, with the exception of the Moro Province, I have come into contact both with the officials and with those people who surround them. I am by law required to make annual visits throughout

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those provinces organized under the Special Government Act,
88 and I come into contact with the officials and inhabitants of those provinces.

Q. Please state briefly the extent to which the Spanish language is read and spoken in the Philippine Islands?

A. Spanish is quite generally spoken throughout the municipalities of the Philippine Islands, to a lesser extent in the outlying barrios of the Philippine Islands, and to a limited extent in the territory of the Non-Christians, and in certain parts of that territory not at all.

Q. And as to its being read, how is that?

A. It is read as a rule wherever it is spoken.

Q. I will show you what purports to be an editorial in the newspaper El Renacimiento of October 30th, 1908, marked for identification Exhibit A., and will ask you to state if you ever saw that editorial before?

A. I have.

Q. I will ask you to state what it is?

A. It is an editorial entitled "Birds of Prey", in the number of the newspaper El Renacimiento for Friday, October 30th, 1908.

Q. I will ask you to state whether or not you have ever read that editorial?

A. Yes sir, I have.

Q. When did you read it?

A. On the morning of Monday, November 2nd, about 7.30.

Q. Directing your attention particularly to the paragraph in that article beginning with the word "Subiendo" and ending with the word "propio", I will ask you to state whether or not you ever
89 had any relation or any connection with the matters therein referred to, and if so please state what this connection or relation has been?

Sr. SALAS: Objected to on the ground that the question calls for the opinion of the witness.

The COURT: Objection overruled.

Sr. SALAS: Exception.

A. I have ascended the mountains of Benguet to classify the Igorotes of that province, to study them and to carry on investigations which would form a suitable basis for measures for their civilization and for general measures looking to their civilization and advancement. I have directed the measuring of their heads, and have aided the official who actually performed that work in his labors. I have directed efforts made by employees of the Bureau of Science to discover deposits of gold in that province. As member of the legislative body of these islands, and as the officer exercising control over the former Bureau of Mines and the present Division of Mines in the Bureau of Science, I have enjoyed special facilities for aiding in the making and unmaking of laws and rules having to do with the acquiring of title to mining properties.

Q. Directing your attention to the next paragraph of Exhibit A., I will ask you to state whether or not you have had any relation or

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connection with the matters therein referred to, and if so please state what this relation or connection has been?

90 Sr. SALAS: Objected to for the same reason, as calling for the opinion of the witness.

The COURT: Objection overruled.

Sr. SALAS: Exception.

A. Referring to the paragraph beginning with the word "Autorizando" and closing with the word "oficial", as Secretary of the Interior I have executive control of the Bureau of Health, one of the duties of which is to see that the people of Manila are not poisoned or injured by impure or improper food. I also have executive control of the Bureau of Agriculture, the director of which may by rule authorize or refuse to authorize the issuing of landing permits for a shipment of animals infected with dangerous communicable diseases. In point of fact I have recently exercised my authority in connection with the shipment of diseased animals which arrived at this port, to the extent of saying that I had no objection to the killing of these animals, as had been done in the case of a previous diseased shipment, and to the landing of their flesh.

Q. Calling your attention to the next paragraph of the Exhibit A., I will ask you to state if you have had any connection or relation with the matters therein referred to, and if so please state what that connection or relation has been?

Sr. SALAS: Same objection.

The COURT: Same ruling.

Sr. SALAS: Exception.

91 A. Referring to the paragraph beginning with the word "Presentándose" and ending with the word "climas", I have a wrinkled brow; I have spent a considerable portion of my time within the past few years in performing work in the laboratory of the Bureau of Science, I have imported fish eggs for the purpose of substituting certain worthless fishes, in the streams of the Province of Benguet, with other valuable food fishes, and I am the only person who has imported living fish eggs since the American occupation of these islands.

Q. Calling your attention to the next paragraph of Exhibit A., I will ask you to state whether or not you have had any connection or relation with the matters therein referred to, and if so please state what that connection or relation has been?

Sr. SALAS: Same objection.

The COURT: Same ruling.

Sr. SALAS: Exception.

A. Referring to the paragraph beginning with the word "Dando" and ending with the word "ajenos", I have travelled extensively in the islands of Mindoro and Mindanao and in other virgin regions of the archipelago; I have directed the carrying on of investigations looking to the discovery of valuable lodes in these regions, viz., in Mindoro, in Mindanao and in other virgin regions of the archipelago; and I have myself carried on investigations into the forest

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and agricultural resources and possibilities, with a view to their development as sources of wealth.

92 Q. Calling your attention to the next paragraph of Exhibit A., I will ask you to state whether or not you have had any connection or relation with the matters therein referred to, and if so please state what that relation or connection has been?

Sr. SALAS: Same objection.
The COURT: Same ruling.
Sr. SALAS: Exception.

A. Referring to the paragraph beginning with the word "Promoviendo," and ending with the word "conviene", I have engaged in the purchase of two tracts of lands, in both of which the city was interested, and a portion of one of the tracts was actually deeded to the city.

Q. Directing your attention to the next paragraph of Exhibit A., I will ask you to state whether or not you have ever had any connection with the matters therein referred to, and if so please state what it has been?

Sr. SALAS: Objected to for the same reason.
The COURT: Same ruling.
Sr. SALAS: Exception.

A. Referring to the paragraph beginning with the word "Patrocinando" and ending with the word "país", I in common with other members of the Commission have favored the granting of a hotel site on filled-in ground, and on ground filled in at the cost of the people of this country.

Q. I will ask you to state if the matters about which you have just testified are matters of common knowledge in the city of Manila and the Philippine Islands?

A. They are.

93 Q. Calling your attention to what purports to be an article in the newspaper El Renacimiento of October 27th, 1908, marked for identification Exhibit B., I will ask you to state whether or not you have seen that article before?

Sr. SALAS: Objected to on the ground that it is for the purpose of identifying a newspaper which has nothing to do whatever with the issue, and it is therefore irrelevant.
The COURT: Objection overruled.
Sr. SALAS: Exception.

A. I have.

Q. Please state to the Court what this Exhibit B. is?

A. It is an article at the head of the column marked "Hablillas del Vulgo Son," in the number of the newspaper El Renacimiento for Tuesday, October 27th, 1908.

Q. Calling your attention to what purports to be an article in the newspaper El Renacimiento, marked for identification Exhibit C., I will ask you to state whether or not you have ever seen that article before?

A. I have.

Q. Please state what it is?

Sr. SALAS: Same objection.
The COURT: Same ruling.
Sr. SALAS: Exception.

A. This is an article entitled "Violacion de las Ordenanza-. Autoridades Complicades. Habremos Comido Carne Infectada?" in the number of the newspaper El Renacimiento for Monday, October 26th, 1908.

Mr. SOUTHWORTH: You may take the witness.

94 Cross-examination by Sr. SALAS:

Q. You have stated that you have ascended the mountains of Benguet?

A. Yes sir.

Q. Is it not true that you are not the person who went there for the purpose of examining the skulls of Igorotes and classifying them, and also that you are not the person who went there for the purpose of spying with the eye of the bird of prey where are the large deposits of gold?

A. In answering this question you have selected certain clauses of the paragraph referred to and have omitted other clauses, so that your question does not refer to the article as it was actually written. Replying to your question as asked, I have never myself measured the heads of Igorotes, lacking the necessary technical knowledge. I have directed the carrying on of that work by others, and have actually aided in manipulating the instrument, doing such work as I was able to do with my faulty technical knowledge. I have also never myself sought for sources of gold in Benguet, as I have not the necessary technical knowledge to make it possible for me to do so. As already stated I have directed the making of such investigations with this end in view, and they have been made by my subordinates.

Q. According to that you have not measured the skulls of Igorotes, and you have not ascended the mountains of Benguet for the purpose of looking after deposits of gold?

A. That statement is strictly correct, if by that the gentleman inquires as to whether I have done this personally.

95 Q. Is it not true also that you are not the person who ascended the mountains of Benguet and after finding these deposits of gold appropriated them to yourself through facilities that your position enabled you to?

A. I am the person referred to as having done that, but I have never done that.

Q. My question is this: that having ascended the mountains of Benguet you went there for the purpose of discovering deposits of gold and appropriating them to yourself. I want to know whether or not you are that person ?

The COURT: The witness has answered that he did not do it.

Q. Is it not true that you are also not the person that discovered

COPY BOUND C

in Benguet deposits of gold for the purpose of appropriating for yourself and benefit, thanks to facilities that your position enabled you to do?

Mr. SOUTHWORTH: Objected to on the ground that that question has been answered by the witness.

The COURT: Yes, the witness has already answered, but he may answer again, as he may not have included all the question asked.

A. I never ascended the mountains of Benguet for the purpose of discovering deposits of gold and setting them aside for my own use through manipulation of laws; but I have facilities for the making and unmaking of laws in that connection, and for setting aside such deposits of gold, such as have not been possessed by any other person in these islands.

Q. According to that, if there is a person who acquired mines in that territory, you must know it?

96 A. I should know it before they acquired title to these mines.

Q. And would your authority be sufficient to grant such person the ownership of the mine?

A. I think before the patent to a mine was accomplished, the document would also require the signature of the Governor General. I cannot state fully in regard to that, for the fact is that as yet no patent has been issued for Benguet.

Q. Do you know of any petitions in relation to deposits of gold in Benguet, that as Secretary of the Interior you have under your control?

A. I have never seen any requests for the registration of mining claims in Benguet, but some questions relative to administrative having to do with mining claims which have been registered there, have come to my office.

Q. Is it not true that in Benguet there are some mining properties in the name of Clarke?

A. Mr. Clarke is interested in mining properties in Benguet, but I am not prepared to say whether they stand in his name or in the name of some company, because I do not know.

Q. Do you know from whom Clarke acquired that property?

A. I know nothing about it at all.

Q. As Secretary of the Interior, can you tell if the petition of Clarke was made in his name?

A. I do not know. The present status of mining claims in Benguet acquired since American Occupation, is that of the registration or recording of the claim. These papers do not come to me,

97 but go to the provincial official upon whom is imposed by law the obligation of recording them. I have never read the records of this province, and have no personal knowledge of the claims that have been recorded, the persons who recorded them, nor the preliminary proceedings through which such claims were obtained.

Q. Is it not true you sometimes visit the mines of Clarke in Benguet?

CLOSE IN CENTER

A. I have never visited the mines of Mr. Clarke in my life.

Q. Did Clarke inform you in regard to the progress and development of these mines?

A. Often, I ask him about it almost every time I see him, as well as the other persons who are developing mines in Benguet.

Q. Have you got an approximate knowledge of these mines which are in the name of Clarke?

A. Not the slightest. I know under the law he can have certain properties, but I do not know to what extent he has taken advantage of it.

Q. Is it not true, Mr. Worcester, that there were other persons who made studies of the Igorotes in Benguet and other parts of the Philippine Islands?

A. The Igorotes are limited to a small region in Northern Luzon; other persons have studied the Igorotes of Benguet.

Q. Do you know more or less who these persons are?

A. I know a number of them.

98 Q. Please repeat some of their names?

A. Scientific studies have been made under my direction by Mr. Otto Scherrer, to whom I furnished a list of questions he used; by Dr. David P. Barrows, whom I ordered to the province for that purpose; by Dr. Bean of the Philippine Mining School, for whom I aided in securing the opportunity to go there and whom I assisted in measuring the heads of the Igorotes. These are the principal scientific investigations. Dr. Miller of the Ethnological Survey has made some investigations, but he has never published any results.

Q. Do you know of any persons who made such studies, who did not act under your direction?

A. I do not know of any other scientific investigations that have been carried on. In the Book of Plates, reproduction of photographs published by Schadenbery & Meyer, there are some pictures of Igorotes, but there are no important scientific data there.

Q. Do you know of some other person who went to the interior of the mountains of Benguet, and other parts of the Philippine Islands in search of deposits of gold?

A. I do not know what the gentleman means by some other person; as I have explained I have not done this, but I know of numerous people who have investigated both the mountains of Benguet and other regions in the Philippine Islands, as I have already stated in reply to the query of the gentleman.

Q. Is it not true that these other persons made these investigations for their own benefit?

A. Some of them did and some of them did not, but none

99 of them, so far as I know, have enjoyed special facilities for the manipulating of laws so that these properties might result in their own benefit.

Q. Can you mention some of these persons who made these investigations?

A. Certainly.

Q. Will you kindly do so?

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A. Mr. Hiram B. McCaskey, former chief of the division of mines; Mr. Smith, I forget what his initials are, at present an employee of the division of mines; Mr. Harry Amicis of the division of mines; Mr. Maurice Goodman of the division of mines; and Mr. Eveland of the division of mines.

Q. And persons who were not employees of the Government?

A. I have no familiarly with those operations; I know that Mr. Wright as a prospector has made such investigations.

Q. These five gentlemen who were there as employees of the division of mines, did they work under your control and direction?

A. Yes sir.

Q. Did you have anything to do personally with their acts?

A. I ordered them to go there frequently, passed on the question as to whether it were well to end their work and come back, approved of the publication of their reports when ready for publication, and passed upon administrative questions relative to the paying of the cost of the work.

100 Q. As Secretary of the Interior, in your journeys as such, you did not have anything to do personally in these investigations, having these people under your orders?

A. On the contrary, I have taken Mr. McCaskey with me on certain occasions, and have directed him to make investigations in certain definite places, where with my limited knowledge it seemed to me possible that such investigations might result profitably.

Q. Did you personally reach the point for the search of these deposits of gold?

A. Some of them.

Q. In the places where you went and found there these deposits of gold, were they in the places which you visited in your journeys as Secretary of the Interior?

A. I have not stated that any deposits of gold were discovered; the places where I directed investigations to be made were along the route which I followed on official journeys.

Q. So as Secretary of the Interior you did not reach the places where these deposits of gold were?

A. I have twice told the gentleman, and I tell him the third time now, that I have not stated any deposits of gold were discovered, but at the places where I directed the investigations to be made I personally was present.

Q. And that was not the place of your journeys as Secretary of the Interior?

A. No, it was in the place where I went as Secretary of the Interior, as I have stated three times.

Q. Can you tell us in which way you civilized the Igorotes of Benguet?

101 A. I can.

Q. Please state?

A. By using my influence successfully with the Philippine Commission, I secured the enactment of laws for this end, and as Secretary of the Interior I have administrative control of this law, which

CLOSE IN CENTER

has been successfully administered to this end. I may mention certain specific measures which I brought about——

The COURT: Confine yourself to the issue.

Q. Has that law been passed in regard to that matter?

A. Yes sir.

Q. And working in accordance with the sense of that law, did you come into actual contact with the Igorotes?

A. Yes sir.

Q. In this contact of yours with the Igorotes, did you not take advantage of it to discover deposits of gold?

A. Whenever possible I have interrogated every Igorot that I thought might give information upon that subject.

Q. And this information was beneficial to your department?

A. I regret to say that the Igorot has not as a rule displayed a desire to convey information on this subject, and that I have never derived from them any information of value.

Q. Have you received any propositions or transactions relating to deposits of gold from the Igorotes?

A. What do you mean by transaction?

Q. Transaction of purchase in any way?

A. No.

Q. Did you ever receive any proposition to purchase any mine from the Igorotes, or any gold deposit?

102 A. No, and the only Igorot property which I know of value if delivered, got recently tied up in litigation, and it has been until very recently doubtful whether they could convey title.

Q. Is it not true, Mr. Worcester, that you are not the person who authorized, in spite of laws and ordinances, the killing of sick cattle in the Bay of Manila?

A. I authorized it in the sense of stating that I had no objection to the killing of sick animals in the Bay of Manila, and without such authorization on my part, if that be called authorization, such killing would not have been possible, except in deliberate violation of law.

Q. To whom did you have an opportunity of not making that objection to which you have testified?

A. To the Director of the Bureau of Agriculture.

Q. In writing, or verbally?

A. Neither.

Q. Then how was that authorized?

A. I was sitting in a meeting of the Philippine Commission when my secretary entered and stated that there was in the Bay a shipment of cattle coming from Hongkong, of which some of the individuals had foot and mouth disease, and that the Director of Agriculture had inquired by telephone whether I had any objection to the killing of these animals and the landing of the meat, as was previously done, with the approval of the municipal board, in connection with the shipment of animals which had been exposed to the infection of anthrax. I stated that I had no objection, and my secretary communicated this fact to the Director of Agriculture by telephone.

103 Q. Was the authorization of the Municipal Board, in regard — this matter, before or after this case?

A. I do not understand that the Municipal Board authorized it; my understanding is that Lack & Davis proceeded without authorization of the Municipal Board, but my knowledge on this subject is hearsay.

Q. Then you do not know whether or not there was any authorization?

A. I know there was no authorization by the Director of Agriculture and there my knowledge ceases. I have heard, like the gentleman himself, what afterwards happened.

Q. And in regard to the information furnished you by your secretary concerning this killing of animals, what did you do as Secretary of the Interior, who has under your control the Bureau of Health?

A. Nothing at all. I saw the statement in the papers that Lack & Davis had killed these animals without securing the proper and necessary authorization from the Municipal Board. I then called upon the Director of Agriculture for a statement of his connection in the premises, to see whether he had in any way been responsible for, or connected with, the violation of the ordinances reported to have occurred, and he furnished me with an official copy of the written order which he issued on this subject.

Q. That killing of animals which you have stated as having been published in the papers, was that after your secretary had informed you about that matter?

A. Long after, probably the next day or the day after.

104 Q. Have you not got supervision over the Bureau of Health?

A. Yes sir.

Q. And did the Bureau of Health take any kind of steps in regard to this killing?

A. The Bureau of Health had nothing to do with this matter, the sanitary question involved having long since been passed upon and settled and the general custom having been thoroughly established of allowing the killing in the Matadero of animals when they were suffering from foot and mouth disease, and the selling of the flesh. There is not a dealer of cattle in the city of Manila, Filipino, American or other, who has not repeatedly received permission to do this. The only time when animals suffering from foot and mouth disease may not be killed is when they have a high temperature, and as soon as the temperature drops and before it rises they are fit for human consumption, and they are killed every day in the city of Manila. Therefore when the question came up as to whether any of these animals, some of which had foot and mouth disease, could be killed, and whether the flesh was fit for human consumption, there was nothing for the Bureau of Health to do, it only remained for the veterinarians to make the necessary observations.

Q. Did your secretary inform you of what disease these cattle were suffering from, which were intended to be killed by Lack & Davis in the Bay?

105 A. Yes sir.

Q. Can you tell us what sort of disease it was?

A. The infirmity commonly known as foot and mouth disease, and scientifically known as glossopœdia.

Q. Is it not true that glossopœdia is one of the sicknesses considered as dangerous diseases, by regulations in regard to that matter?

A. Yes sir.

Q. Do you know on what day that killing took place?

A. I think on the 20th of October.

Q. How many head of cattle were slaughtered at that time?

A. I do not know.

Q. In what way did those cattle come which were killed, and on board what vessel were they killed?

A. I do not know on what vessel they came, I do not remember. I am informed that they were transferred to a casco and killed on the casco; at all events the order issued by the Director of Agriculture authorized their transfer from the steamer to a casco, and that was all he did authorize.

Q. When your secretary informed you about this matter, did he tell you where the cattle came from?

A. They came from Hongkong.

Q. Do you know whether or not prior to that time there was any importation made by Lack & Davis?

The COURT: What is this for, this is entirely immaterial?

Q. How many importations of sick cattle had been made by Lack & Davis prior to this time?

106 A. As far as I am aware this was the first importation they ever brought in, but I may be mistaken. If the gentleman desires to find out, as he evidently does, whether three infected shipments had been previously received from this port, I will tell him that three shipments had long before been received, and the law states that in such cases landing permits for them will not be issued unless the Director of Agriculture authorizes it. Flesh of animals which have been killed becomes in law not cattle but effects pertaining to such cattle, and at this time there did not exist any rule as to whether or not such effects might be landed, nor had any importer requested a ruling on this point. When the question arose we met it.

Q. But as a matter of fact there were such cattle, and of that your secretary informed you?

The COURT: The witness has answered this three or four times and if you cannot confine yourself to questioning the witness properly, he will be withdrawn.

The hearing was then adjourned until 2.30 in the afternoon.

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Afternoon Session.

Pursuant to adjournment the case was called this p. m., with the same appearances.

107 DEAN C. WORCESTER, still on the stand, testified as follows:

Cross-examination by Sr. AGONCILLO:

Q. Will you state, Mr. Worcester, whether or not you had knowledge of the killing of these cattle in the Bay of Manila?

A. As I have stated this morning, I did hear of that event subsequently, first through the newspapers.

Q. If I am not mistaken, nor in error, I believe you have stated this morning that your authorization was requested for the killing of these cattle in the Bay of Manila, and that you offered no objection to these cattle being killed?

A. The statement of the gentleman is substantially correct; I was asked whether I had any objection to the killing of these animals and the landing of their flesh, as was done in cases of previous shipments affected with anthrax. Had I declined to approve this, it would have ended the matter. I said that in so far as I was concerned I had no objection, and that left my subordinate, the Director of Agriculture, free to act in the matter as his discretion might dictate.

Q. Please state whether or not if by virtue of that statement of yours, that you on your part would have no objection to the killing of these infected cattle, the Director of Agriculture authorized, or gave the corresponding permit for the landing of these infected cattle, to be killed in the Bay of Manila?

108 A. He did not give such permission, but he gave permision to transfer them from the ship to a casco.

Q. The question is this: whether or not the fact of your having offered no objection to the killing of these cattle, was sufficient so that the Director of Agriculture could authorize, or give the necessary permit for the killing of these infected cattle in the Bay of Manila?

A. No, he had nothing to do with the killing in the Bay, except in the sense that if he had declined to approve it, it could not have taken place. The gentleman seems to fail to distinguish between the negative power exercised by myself and the Director of Agriculture, and the positive power of the municipal authorities in that matter. Neither the Director of Agriculture or myself had any power of authorizing the killing of these animals in the Bay, if their flesh was subsequently to be sold for human food, nor did the municipal authorities have any authority to state, prior to our approval, that the animals might be killed in the Bay. There were two perfectly separate and distinct matters involved; the one was what might be done with them in view of the fact that some of them were infected; the other was what might be done in the matter of killing them outside of Matadero, where according to the ordinance they must be killed, if the flesh was to be sold for human

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consumption. The authority exercised by the Director of Agriculture and myself was sufficient only in so far as referred
109 to the former of these two points. Having withdrawn any objection on our part to the killing, it then remained for the municipal board to see whether or not it would allow them to be killed in the Bay, and with that we had nothing whatever to do: we could neither authorize it nor refuse to authorize it, because it was entirely beyond our jurisdiction. The net result of our action, therefore, was to leave the municipal board free to act in the premises.

Q. So these infected cattle were slaughtered in the Bay of Manila without the necessary permission of yourself as Secretary of the Interior, or of the Director of Agriculture?

A. No, they had the permission of myself and the Director of Agriculture, which was necessary; but they did not have the permission of the municipal board, which was also necessary. The actual permission given to them, however, made no reference to the killing. It authorized their transfer in order that they might remain in the Bay, in view of the fact that the steamer was about to sail, until the matter could be properly settled. The importer of the cattle, without due authority but probably believing he had it, went ahead and killed them, not in violation of any law of the islands, but of an ordinance of the city of Manila.

Cross-examination by Sr. MORENO:

Q. In case of the United States vs. Martin Ocampo I questioned you in the following way: "Is it not true that recently you
110 gave orders to the Director of Agriculture in relation to the slaughtering of animals in the Bay?" and you replied: "No. I never ordered the slaughtering of any animals in the Bay." Then I asked you: "But you learned of that fact?" and you answered: learned of it after it had occurred."

A. I decline to accept the gentleman's statement as to what was said in the previous case; the record will show what was said. I shall be pleased to answer any question which he may desire to put.

Q. That is what appears in the record, Mr. Worcester?

A. I am happy to to accept your statement for that.

Q. Should that happen to be in the record, how will you compare your testimony at the present time with your testimony in that case?

A. Perfectly, I never ordered the killing of any cattle in the Bay of Manila, I stated I had no objection to it, which is entirely different from ordering it.

Q. But there you testified that you did not know of the fact until after it had occurred, and now you state you knew it before they were killed?

A. No, I made no such statement. In the first place I could not know of the fact that the animals were killed before they were killed, because it would not be true; and in the second place I deny that I had any knowledge that the animals had been killed at the time I passed on the matter; and in the third place, according to my in-

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formation this was not the case. I understand that the animals were not killed until after I had passed on the matter, and after the Director of Agriculture had passed on the matter.

111 Q. But you have just stated that they asked you whether or not you would have any objection to the killing of these animals in the Bay?

A. Yes.

Q. And that you on your part had no objection?

A. I said so, yes.

Q. That would lead you to suppose that those cattle would be killed there?

A. Yes.

Q. And yet you testified in the case of Martin Ocampo that you did not learn of this fact until after the animals were killed?

A. Oh no, I testified that I did not learn of the killing until after they were killed, I am not such a fool as to suppose that they asked me whether I would object to the killing of the animals, unless they were thinking of killing them.

Q. Is it not a fact, Mr. Worcester, that it is not true that you "present yourself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes?"

A. I present myself on all occasions with the wrinkled brow, because my brow is permanently wrinkled. I consume not all my life, but a portion of it, in the mysteries of the labora-

112 tory of the Bureau of Science, if they be mysteries. As I have already stated in my direct testimony, I have imported fish eggs with the purpose of replacing the fish in certain of the streams of these islands, and I am the only person who has done so since American Occupation.

Q. Is it not true, Mr. Worcester, that you always present yourself the same as you appear here now?

A. More or less, I think.

Q. Is it not true that now your brow is not wrinkled?

A. I am glad to hear it, but it was the last time I looked in a glass; if the gentleman means frowning, I trust I do not always present myself in that condition.

Sr. MORENO: I would like it to appear in the record that at this moment Mr. Worcester presents himself in court with a wrinkled brow.

The COURT: Proceed.

Q. Is it not true that as Secretary of the Interior you cannot devote yourself on the studies of the laboratory of science?

A. Not all of my time, I can devote a part of it; sometimes it has been insignificant, at other times not, depending on the work on hand.

CLOSE IN CENTER

Q. And the time you devote in the laboratory of science, it is not for dissecting of insects or animals?

A. In the dissecting of animals, or other animals I should say, insects being animals.

113 Q. But this time you occupied for dissecting animals, was not time you have to devote there as Secretary of the Interior?

A. Yes it was, regular office hours.

Q. Did that form part of your duty as Secretary of the Interior?

A. I believe so, otherwise I should not have done it.

Q. Is it not true that when you devote your time in doing this, you do it out of working, official hours?

A. I always have more work before me than I can perform, it is therefore necessary for me to determine not what I will do, but what I will for the time being leave undone. In performing work at the laboratory of the Bureau of Science, I have done it only on occasions when there was no one else who could do what I did, and because I deemed it to be important that it should be done.

Q. Is it not true that most of the times you went to the laboratory of science was more to inspect the work done there than anything else, in compliance with your duties as Secretary of the Interior?

A. I have gone there more frequently to inspect than to work.

Q. Is it not true that these occasions you went there to dissect were less frequent than those you went there to inspect?

A. Yes sir.

Q. Is it not true that these occasions when you went there to dissect, has been only once or twice?

A. More than that, but infrequently, but I invite the gentleman's attention to the fact that the work of dissecting is not the

114 only scientific work which I perform there.

Q. I refer only to the work of dissecting.

A. They have been relatively infrequent.

Q. Is it not true, Mr. Worcester, that you are not the one who brought here, nor imported into the Philippine Islands, fish eggs?

A. For the third time, I am the person, and the only person, who imported fish eggs into the Philippine Islands.

Q. Are you the one who, without material aid, brought to Manila fish eggs from Japan?

A. If the gentlemen means to ask a very singular question, as to whether I personally brought fish eggs across the sea from Japan to the Philippine Islands without material aid, no.

W. Is it not true, Mr. Worcester, that in the importation of these fish eggs you were not the only one who had anything to do with it?

A. Various other people had to do with it. Someone got the fish, stripped the eggs and fertilized them, packed them in the proper receptacles and delivered them to the transportation company; someone made out the bills of lading covering the transportation; in other words, the usual and necessary transactions in connection with every importation were gone through with in this case. The cases were brought here on a steamer, as there is no railroad between Japan and

this country. I was the importer in the usual legal sense of the word.

115 Q. I refer to the officials of the Philippine Islands; besides you some others had to do with the importation of the eggs?

A. No sir. Others had to do with the unloading of them after they got here, but I conducted the correspondence.

Q. Is it not true, Mr. Worcester, that you did not "give an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others."?

A. I believe I have given some very admirable impulses to the discovery of sources of wealth in Mindoro, by directing the carrying on of investigations to that end. I also gave a certain impulse to that work by performing it myself, so far as concerns investigations of forestry resources and agricultural resources.

Q. Are you the Mr. Worcester who devoted yourself personally to the discovery of wealthy veins at Mindanao?

A. If the gentleman uses the word in what I understand to be its strict technical sense, viz., lodes, no; if he uses the word in the figurative sense of sources of wealth, yes; but so far as the actual discovery of deposits of valuable metals is concerned, no, because I have not the necessary technical knowledge.

116 Q. In this figurative sense to which you allude, did you do that with the object of obtaining all the data and the key to the national wealth, so far as it was to be done by yourself?

A. To devote them to my private, personal benefit, no, and the information gained on my trips has always been freely at the disposal of anyone who desired to ask for it.

Q. Is it not true that you are not the only official who made these trips in Mindoro and Mindanao and other virgin regions of the archipelago, for the purpose of giving an impulse to the discovery of wealth in these places?

A. Certainly, it is true that I am not the only person.

Q. Is it not true, Mr. Worcester, that you did not acquire any property in the name of another person?

A. It is true, the only piece of real estate I own in these islands was bought at public auction.

Q. In your own name?

A. Yes, in my own name.

Q. Is it not true also that you did not "promote, through secret agents and partners, the sale to the city of worthless land at fabulous prices which the City fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good."?

A. I have never employed secret agents or partners in connection with the negotiations for the purchase of land. I have purchased land, part of which was subsequently deeded to the city, the whole

transaction being conducted directly by me, and without the
117 use of agents, as is every purchase of land ever made by the city of which I have any knowledge.

Q. Is it not true that other functionaries made efforts and had something to do in the sale of some land to the city of Manila?

A. In connection with the only piece of land which, so far as I know, has been actually deeded to the city, others began the negotiations, made a failure of them, and abandoned them. After a certain time I took them up anew, and carried them through to a conclusion, so that I was the person who bought the land.

Q. Is it not true that the purchase or sale of that land was verified directly between the owner and the city of Manila?

A. Two deeds were issued for the land, one deeded a certain portion of it directly to the Insular Government, and the other deeded a certain other portion of it directly to the city of Manila, without condition, but the Commission imposed a condition on the city of Manila, which the city of Manila accepted, to perform the filling in of this property, or the property to which it was added, to the approximate amount of the actual cost of the land presented, so that the land was transferred directly to the city without conditions, but in connection with that transfer there was a tacit acceptance on the part of the city, which was afterwards made a formal acceptance, that it would do work for the Insular Government sufficient to pay for the cost of the land.

118 Q. So in that sale of land to the city of Manila the Commission in a certain way had something to do with it?

A. The Commission was kept informed of the progress of the negotiations, and was asked whether or not it approved of the price asked, and the price fixed by the Commission as a proper one was the price I finally succeeded in obtaining it for.

Q. But the Commission directly took part in these negotiations?

Mr. SOUTHWORTH: Objected to on the ground of repetition.

The COURT: The witness may answer.

A. Answering the specific question as to whether the Commission took part in the negotiations, the Commission did not take part. I conducted the negotiations, reporting progress from time to time to the Commission to see whether they approved of what I had done, as I desired to work with their approval, and in point of fact they approved it. The negotiations were conducted by me, and by no one else.

Q. Is it not true that the Governor General and Dr. Pardo Tavera took part in the sale of this land?

A. No, they attempted to purchase the land, and failed. The best price which they obtained was four pesos per square meter, and the Commission refused to pay that, and that ended the matter.

Q. These negotiations carried out by you, was it officially known that you did it personally?

A. No.

119 Q. Without the intervention of any other person?

A. I do not know whether people thought anyone else was

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intervening, or not. I conducted the negotiations, and everyone informed as to the truth knew that fact. What stories may have been in circulation, I do not know.

Q. But in all these acts in relation with the sale it appears on the records as carried on by you personally?

A. The deed was made out by the proper official in the law office at my request. I used stenographers in connection with my work.

Q. Is it not true that the sale in favor of the Insular Government of the tract of land that the Government wanted for themselves, was so deeded in the name of the Government?

A. I have no doubt but that it was, I do not remember the *fork* of the deed, and not being a lawyer I did not interest myself in it. I asked the proper official of the Attorney General's office to make out a deed that would stick, and as I was buying the land for the Government and for the city I took it for granted, especially in view of the fact that the Government got its part and the city got its part, that it was transferred to the Government and city respectively.

Q. Is it not true that you did not sign the document of sale?

A. As I was neither vendor nor purchaser, yes.

Q. Is it not true, as a matter of fact, that you did not "patronize the concession for hotels on filled-in land, with the prospect of enormous gain, at the expense of the blood of the people"?

120 A. I have done a part of that, and part of that I did not do. I favored in every possible way, so far as in me lay, the concession of a hotel site on the one piece of filled land which had been set aside for that purpose, and this land was filled at the cost of the people of these islands.

Q. Is it not true that in that negotiation all the efforts made by you was only to vote together with the Commission in the concession of this site?

A. No, that is not true.

Q. Is it not true that you did not take any direct part in that, nor did you personally make any effort, as Secretary of the Interior, to present the land asked for that concession?

A. I took no part in the matter as Secretary of the Interior, I took part in it as a member of the Philippine Commission. I never remember to have had any personal discussion with anyone interested in that concession except on one occasion, when I did have such a personal conversation.

Q. What efforts then did you make in regard to that concession?

A. I spoke in favor of it in the Commission, stating the importance in my judgment of securing a good hotel on an excellent site, expressing the opinion that this site was a suitable site, and that it could be used for that purpose, voted in favor of the action taken by the Commission requiring the Municipal Board to act further

121 in the premises, and on the occasion when I conferred with one of the gentlemen interested in securing this concession stated, that I would use all the influence I possessed in favor of the granting of a suitable concession to a responsible body of men to the end that we might get this great hotel, so fundamentally necessary to the prosperity of Manila and to these islands.

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Q. In the case of the United States vs. Martin Ocampo, you were questioned by me, and you answered in the following way:

"(A.) I voted in favor of several measures which have been passed by the Commission relative to the concession of a hotel site on the so-called Luneta site.

(Q.) Did you only vote in the Commission to authorize the concession, or did you procure it?

(A.) Measures which have passed the Commission are simply measures authorizing the city of Manila to take certain action relative to a hotel site, and I voted in favor of these measures, which will be found of record.

(Q.) And you did not influence or urge the concession?

(A.) I did not."

A. I understand you are reading from a copy of the record. No concession has been granted. I have not influenced the granting of any concession, nor have I urged the granting of a concession. I have urged the authorizing of the Municipal Board to grant a concession, and that is what was done. I understand that ques-
122 tion to refer to the influencing or urging of the granting of a specific concession. No such concession has been granted, nor has anyone as yet asked for a concession, so far as I know.

Q. But you have just testified that you spoke in favor of the ceding of such a concession?

A. I have.

Q. And here, in answer to one of my questions, you state that you have taken no measures on your part, nor worked in favor of that concession?

A. The record does not state that, that I did not say a word in favor of the granting of a concession. The question there was, whether I had actually favored the granting of that concession. It would be absurd for me to say I had, because there has been no concession granted, nor has there ever been an opportunity to grant one. The action of the Commission had to do, pure and simple, with the authorization of the Municipal Board to act, and that action I favored and urged. Now I am entirely free to say to the gentleman, that at the time he asked me the original question I should not have been able to reply to the question that he asked me today, because I did not carry in my head everything that I saw in the sessions of the Commission, but since the matter has been repeatedly brought up here I have consulted the records of the Commission, and my testimony is in complete accord with the recollection of my colleagues as to what I did, and which has been set forth in the testimony of the Governor-General.

123 Q. When you testified in this case there was no such concession yet, the same as now, but upon talking of that concession in general terms you have stated that you did not urge such a concession, and here you state the contrary?

A. I deny it, the record will show.

Q. Is it not true, Mr. Worcester, that other members of the Com-

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mission also urged that which you did, and were favorable to it, in relation to this concession?

A. Yes.

Q. And they voted in relation to the concession as you did?

A. My recollection is that the vote in favor of it was unanimous.

Sr. MORENO: That is all.

NEWTON W. GILBERT, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?

A. Newton W. Gilbert.

Q. Where do you reside?

A. At No. 197 Calle Herran, Manila.

Q. What official position do you hold?

A. Member of the Philippine Commission.

Q. Do you know Commissioner Dean C. Worcester?

A. Yes sir.

124 Q. How long have you known him?

A. Between three and four years.

Q. Are you familiar with his official acts and duties in the Philippine Islands?

A. Yes, I am quite familiar.

Q. I will show you what purports to be an editorial in the newspaper El Renacimiento, marked for identification Exhibit A., and will ask you to state if you ever saw that editorial before?

A. I have, a number of times.

Q. Have you read or heard read that article?

A. I have done both.

Q. Directing your attention particularly to the paragraph of this editorial beginning with the word "Subiendo" and ending with word "propio", I will ask you to state whether or not you know of any relation or connection which Commissioner Worcester bears to the matters therein referred to, and if so please state what that connection or relation is?

Sr. AGONCILLO: Objected to on the ground that the question calls for the opinion of the witness, and that it is leading.

The COURT: The objections are overruled.

Sr. AGONCILLO: Exception.

A. This paragraph to which you refer describes a person who goes up into the mountains of Benguet in order to classify and measure the skulls of Igorotes, and to discover valuable deposits of gold:

125 Mr. Worcester's duties, as Secretary of the Interior, put him in control of the bureaus of this government which are engaged in this class of work, both the Bureau of Science and the Bureau of Lands and the Bureau of Agriculture being under his control. Mr. Worcester has made a special study of the Igorot from a scientific point of view.

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Q. Directing your attention to the next paragraph of Exhibit A, I will ask you to state whether or not you know of any relation or connection which Commissioner Worcester bears to the matters therein referred to, and if so please state what that relation or connection is?

Sr. AGONCILLO: Same objection.
The COURT: Same ruling.
Sr. AGONCILLO: Exception.

A. The same answer may be made, there is a connection between Mr. Worcester and the paragraph. The laws relating to the killing of diseased cattle depend for their enforcement upon Mr. Worcester, as Secretary of the Interior, acting through the Bureau of Agriculture.

Q. Directing your attention to the next paragraph of that editorial, I will ask you to state whether or not you know of any relation or connection which Commissioner Worcester bears to the matters therein referred to, and if so please state what that connection or relation is?

Sr. AGONCILLO: Same objection.
The COURT: Same ruling.
Sr. AGONCILLO: Exception.

126 A. The next paragraph refers to a man with the wrinkled brow of the scientist, who devotes his life to scientific investigation, and who is said to have dissected insects and imported fish eggs, the clear indication being these were fish eggs imported for the purpose of replacing the fish of the country. This paragraph is particularly applicable to Mr. Worcester for the reason, first, that he is the most eminent scientist, I think beyond doubt, in these islands, that he is a man of thoughtful mien, which I understand "wrinkled" means, and that as I believe he is the only man who has imported fish eggs into these islands for the purpose indicated.

Q. Calling your attention to the next paragraph of that editorial, I will ask you to state whether or not you know of any relation or connection which Commissioner Worcester bears to the matters therein referred to, and if so please state what that relation or connection is?

Sr. AGONCILLO: Same objection.
The COURT: Same ruling.
Sr. AGONCILLO: Exception.

A. Yes, Mr. Worcester has under his control, as Secretary of the Interior, the development of Mindoro and important parts of Mindanao, and has devoted considerable of the efforts of his department to the discovery of the elements of wealth situated there.

Q. Calling your attention to the next paragraph of this editorial, I will ask you to state whether or not you know of any relation or connection which Commissioner Worcester bears to the matters therein referred to, and if so please state what that relation or connection is?

127

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Sr. AGONCILLO: Same objection.
The COURT: Same ruling.
Sr. AGONCILLO: Exception.

A. The next paragraph refers to the selling of land to the city, I know nothing about that, except what I have heard in this court room today.

Q. Directing your attention to the next paragraph of this editorial, I will ask you to state whether or not you know of any relation or connection which Commissioner Worcester bears to the matters therein referred to, and if so please state what that relation or connection is?

Sr. AGONCILLO: Same objection.
The COURT: Same ruling.
Sr. AGONCILLO: Exception.

A. I can answer you the same as to the next paragraph, I know of no action which Mr. Worcester has taken relating to the building of a hotel on filled-in land here, except what I heard him state here in court, and excepting the further fact that I think everybody in this community, who has the prosperity of the Philippine Islands at heart, has advocated this proposition, and I have no doubt but that he was one of that number.

Q. I will ask you to state whether or not the matters about which you have just testified are matters of common knowledge in the city of Manila?

128 Sr. AGONCILLO: Same objection.
The COURT: Same ruling.
Sr. AGONCILLO: Exception.

A. Yes, everybody in the community of any intelligence at all knows all of these facts about which I have testified.

Q. I will ask you to state, taking into account your acquaintance with Commissioner Worcester, and your knowledge of his public acts and public duties in the Philippine Islands, in connection with the matters about which you have just testified, and in connection with the whole of this article Exhibit A., which you say you have read, whether or not you know of any other man in the Philippine Islands, except Commissioner Worcester, to whom this editorial, Exhibit A., could refer?

Sr. AGONCILLO: Same objection.
The COURT: Same ruling.
Sr. AGONCILLO: Exception.

A. There is no other man in the Philippine Islands, or elsewhere to whom this description refers, I mean this description as a whole.

Mr. SOUTHWORTH: You may take the witness.

Cross-examination by Sr. MORENO:

Q. How long a time is it since you have known the Spanish language?
A. I do not know it very well yet.

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Q. When you read Spanish, can you understand it?

129 A. I do, unless there are words in the article that I do not know the meaning of, my vocabulary is not very large, and I frequently find words I do not understand, though the context often supplies the meaning. In this case the title to the editorial gave me a good start.

Q. But do you understand all the contents of this editorial?

A. I think I do, you know I have been a witness five times on this article, I think I understand this better than any other piece of Spanish I ever saw.

Q. Will you have the kindness to translate this paragraph from the same editorial:

"Tales son las características del hombre que es á la vez águila que sorprende y devora, buitre que se solaza en las carnes muertas y putrefactas, buho que aparenta una omnisciencia petulante y vampiro que chupa en silencio la sangre de la víctima hasta de jarle exangue."

A. This is not one of the paragraphs about which I have been testifying, but I can read most of it I think: Such are the characteristics of a man that is at the same time a bird that surprises and devours, (I am not sure whether that is a bird or not) a vulture that fills itself on dead and putrified meat, (I don't know what kind of an animal a "buho" is, but I am satisfied he is a pretty bad hombre) a buho that appears always, a vampire that drinks in silence the blood of the victim until repletion.

Q. I will hand you a piece of paper, which I ask to have marked Exhibit D. 8., on which is written in Spanish

130 the following: "Si me felicito por su nueva posicion deploro por habernos de jado". Will you please read and translate that?

A. Although it pleases me you have a new position I deplore that you have left or lost the other position. That is what I think it says.

The COURT: It is not necessary to proceed further in the attempt to show the qualifications of the witness to translate Spanish.

Mr. SOUTHWORTH: I object to it on the ground that it is immaterial.

The COURT: Objection sustaind.

Q. When did you learn that Mr. Worcester had ascended the mountains of Benguet?

A. I cannot state exactly, seven, eight or nine years ago.

Q. Were you in the Philippine Islands at the time when Mr. Worcester ascended the mountains of Benguet?

A. Not that long ago, no sir.

Q. Of your own personal knowledge, is it not true you only know that Mr. Worcester has been in the mountains of Benguet during the summer when the Insular Government has been there?

A. I never saw him in Benguet in my life, that is not the way my knowledge is obtained, he was never there when I was, as far as I know.

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Q. Then how do you know that Mr. Worcester has been in Benguet?

A. I learned it from Governmental reports, and from books he had written, and that is all I know about it now.

131 Q. And did you know that he went to Benguet for the purpose of measuring the skulls of Igorotes and studying them?

A. Yes. I knew that long before I ever saw the Philippine Islands.

Q. Is it not true that Commissioner Worcester has not under his control, as Secretary of the Interior, the duties of making such studies?

A. No sir, it is not true, if I understand you correctly.

Q. Do you mean to say that such studies are not within his duties?

A. No. I mean to say it is within his duties, I do not mean, of course, set down in so many words in the law that he shall measure anybody's skull, but I mean that he, as Secretary of the Interior, is at the head of all the scientific bureaus of this government, and is also the controlling factor in all the wild mountain tribes, and therefore what studies are made along these lines must be made under his direction, if made by the government at all.

Q. So you merely make a simple deduction in view of the fact that Commissioner Worcester has under his control these scientific bureaus?

A. No sir, it is known to every man who has studied the Philippine Islands in the world, I suppose, unless it may be some here present, that Mr. Worcester is the scientific man on this Commission, and that he was sent here for that purpose by Mr. McKinley, and that his contributions to the scientific and ethnological

132 knowledge of the world, gained largely among the Igorot people, has been a long step in advance of what anybody else tried to do in that direction.

Q. Is it not true, that there are many others who made similar studies?

A. No, no one has made the same studies, there have been some efforts, I suppose, to make studies in these directions, but they have not been efforts that resulted in anything particular.

Q. Is it not true that Dr. Barrows made similar studies over the Igorot people, and about the other non-christian tribes in the Philippine Islands, the same as Commissioner Worcester?

A. No, Dr. Barrows has made some efforts to make some studies in that direction, and I think very creditable efforts for the little opportunity he has had, but they bear no comparison at all to the work done under Mr. Worcester's direction.

Q. Do you know whether or not the studies made by Commissioner Worcester have been made by him personally?

A. I think they have, very largely among the Igorotes.

Q. How do you know that; did he tell you that personally?

A. I have heard him talk about it, but I do not base my answer upon that. I base my answer upon the official reports of this govern-

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ment, and published works. I could not tell any other way, because I have not scientific knowledge in that direction myself.

Q. Is it not true that Mr. Otto Scherrer made similar studies to those of Commissioner Worcester?

133 A. No, no one has made studies equal to Mr. Worcester, not to compare with his, and no one has had anything like the opportunity that Mr. Worcester has had.

Q. Do you know the work of Mr. Otto Scherrer in that direction?

A. No, I do not know much about it. I was asked here the other day and I could not place Mr. Scherrer for the time being, but I learned afterwards that I had heard about him, and that he is now in the Bataanes Islands.

Q. Is it not true that Commissioner Worcester did not devote himself to the study or to the inspection of mineral lands?

A. I know that under Mr. Worcester's direction there has been a good deal of study of the mining possibilities of Benguet, and other parts of the islands.

Q. How do you know that?

A. Because I remember reading one or more reports of considerable length regarding the mineral resources of the islands, made by one of the bureaus under the direction of Mr. Worcester.

Q. Were these studies made under his direction, or merely by a bureau under the control of the Secretary of the Interior?

A. Yes, that is what I mean, I mean by a bureau under his control.

Q. Do you want to say that these studies were not made under the personal direction of Mr. Worcester?

A. No, I do not want to say that.

134 Q. Is it not true that Commissioner Worcester has never authorized any killing of sick cattle in the Bay of Manila?

A. I think he has authorized the killing of sick cattle, my understanding is that diseased cattle have been killed here frequently, and if so it is all done under the direction of Mr. Worcester, I do not mean in the Bay of Manila, I mean in the Philippine Islands.

Q. But do you know of any killing in the Bay of Manila?

A. No, I do not know of any killing in the Bay. I heard some talk about — a while ago.

Q. Is it not true that that is simply an opinion of yours?

A. Which?

Q. About Commissioner Worcester authorizing that killing?

A. No, that is the law, the law provides certain proceedings in regard to diseased cattle, done by the Bureau of Agriculture and the Bureau of Health, entirely under Mr. Worcester's direction and control.

Q. So the slaughtering of these animals depended directly upon the Bureau of Agriculture?

A. Directly the slaughtering would be done by some subordinate of the bureau.

Q. And your only reason for stating that the authorization came

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from the Secretary of the Interior, is because Commissioner Worcester has control of the Bureau of Agriculture?

A. That is the reason, yes sir.

Q. But as a matter of fact you do not know whether Commissioner Worcester has authorized personally at any time the killing of sick cattle?

135

A. I have never heard him issue an order.

Q. Nor authorize it verbally?

A. No, I have never heard it, I simply know how the law fixes it.

Q. Is it not true that Commissioner Worcester, as Secretary of the Interior, has made studies in the laboratory of science?

A. I will have to answer that in a general way. Mr. Worcester is a man of scientific education, a rather eminent man for these parts, in these particulars, and of course he could not have acquired his position in the scientific world unless he had spent much of his time in laboratory investigations. I never saw him at work in the laboratory, but I have seen the results of his work.

Q. And you have never heard that he devoted himself to work in the laboratory?

A. Oh yes, I have heard that he did a great deal of laboratory work, but I have not seen him at work.

Q. Here in the Philippine Islands, and as Secretary of the Interior?

A. No sir, I have not known about his doing laboratory work of any extent in the Philippine Islands, that is personally, but he has charge of all the laboratory work done here by the Government.

Q. According to that your reason for stating that Commissioner Worcester devoted himself to the work of the laboratory, is merely because he is a scientific man, and because the laboratory of science is under his control as Secretary of the Interior?

136

A. No, I do not testify to it merely for these reasons, I have other reasons for knowing that Mr. Worcester has spent much time in the laboratory during his life; this refers to his life.

Q. But that knowledge you have is on account of the studies made by Commissioner Worcester before coming to the Philippine Islands?

A. Partly, and partly since.

Q. And you simply have heard that?

A. No sir, I have read his scientific books and treatises and reports, which show his scientific investigations; that is I have read them in part, I never read his scientific works carefully because I am not a scientific man and would not know much about them after I read them, that is very well.

Q. You have read studies or reports after these proceedings had taken place?

A. No sir, I have not seen any of them since these present proceedings began, or interested myself at all in these proceedings. I have been a witness more times than I cared to be, but I have not devoted any other time to the cases.

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Q. Is it not true that Commissioner Worcester has not devoted himself to the investigation nor to the discovery of veins or lodes in Mindoro and Mindanao and other places of the archipelago which he visited?

137 A. If you mean it is not a fact he has not, I do not think it is a fact; in other words, I think he has devoted himself, and the machinery of the Government over which he had control, to the discovery of every possible source of wealth and prosperity for the Philippine Islands and for the Filipino people.

Q. Is it not a fact that Commissioner Worcester, on going to such places as Mindoro and Mindanao and other places of the archipelago, did so for the purpose of studying the inhabitableness of these places and the customs, with a view to the advancement of the people in progress?

A. I think there were many other objects for which he visited these places.

Q. How do you know that Commissioner Worcester has devoted himself to the discovery of the wealth that existed in these places?

A. I did not say that he had, the paragraph that refers to Mindoro and Mindanao, as I read it, does not say that he made these discoveries by going there. I heard Mr. Worcester testify that he did, but that I have no knowledge of. I know that the bureaus under his control have made investigations of that kind in many parts of the archipelago, and in Mindoro and Mindanao both, but I imagine his official visits are made more particularly to look after the machinery of the Government in these southern islands.

Q. Do you mean to say that you think this paragraph refers to Commissioner Worcester, merely because the bureaus that depend on the Secretary of the Interior devote themselves to the making of these studies?

138 A. If that paragraph stood alone I would not be able to testify that beyond any doubt this editorial referred to Mr. Worcester, because I think there might be some doubt about it, but this article must be taken as a whole, because the same person is referred to all through, and when we once find out who is referred to then the other paragraphs must all be applied to that person, and this paragraph is entirely applicable to Mr. Worcester in so far as the truth in it is concerned.

Q. But supposing this paragraph as in the former ones, could you affirm that the facts in regard to Mr. Worcester, or some bureau under his control at the time, taken jointly together, referred personally to Mr. Worcester?

A. Of course we all know to whom the article refers, there is no one who ever read it, who knew the situation, who denied it, that I have heard of, either in court or out. I have not heard that anybody in court testified that it referred to anybody else. Mr. Worcester is the man who has to do with Mindoro and certain provinces of Mindanao, and the only man in this government. If the part was left out which is not true, or if the part — left out which refers to virgin regions, or the national wealth, in connection with the other

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paragraphs we would still all know to whom it referred. I am not testifying to any matter of opinion, that is common knowledge.

Q. Referring to the paragraph which refers to Mindoro and Mindanao, how can you affirm that Commissioner Worcester is the only man that has been in Mindoro and Mindanao?

139 A. I did not affirm that, I have been there myself.

Q. And do the provinces of Mindoro and Mindanao depend exclusively on the Secretary of the Interior, or do they depend on the Government of the Philippine Islands?

A. They depend on the Government of the Philippine Islands, of which Mr. Worcester is the representative, so far as these provinces are concerned, because he is the Secretary of the Interior and the law gives the Secretary of the Interior control over the non-christian tribes.

Q. And the government existing in Mindanao now, does it depend exclusively on Commissioner Worcester?

The COURT: You are wandering away too far from the subject.

Mr. SOUTHWORTH: I object to that question on the ground that it is immaterial.

The COURT: Objection sustained.

Sr. MORENO: Exception.

Q. These facts mentioned in this editorial, Exhibit A., you believe they refer to Commissioner Worcester because Commissioner Worcester is Secretary of the Interior, and not because he himself had performed or did all of these acts?

A. Why, I cannot answer your question categorically. I believe, inasmuch as you have asked me that this article refers to Mr. Worcester in its entirety, that the acts that it refers to which he has done, I am not referring to those which I believe he has not done, were done by him personally, many of them, but I think almost all of them he would not have done if he had not been Secretary of the Interior, because they were things he did because he was Secretary of the Interior.

140 Q. Since when did you come to the Philippine Islands?

A. I first arrived here in August, 1905, I was only here a month or so, and I came back here in September, 1906, and I have been in the islands ever since, except a couple of months.

Sr. MORENO: That is all.

C. P. SHUMAN, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. C. P. Shuman.
Q. Where do you live?
A. At No. 165 Calle Marcelino.
Q. What is your occupation?
A. Superintendent of the Mailing Division.
Q. The Mailing Division where?

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A. Manila Postoffice.

Q. As Chief of the Mailing Division of the Manila Postoffice, do you know the newspaper El Renacimiento?

A. Yes sir.

Q. Please state whether or not that newspaper passes through the Manila Postoffice?

A. The newspaper El Renacimiento is entered as second class matter in the Manila Postoffice.

Q. Do you know whether or not the issue of that newspaper of October 30th, 1908, passed through the Manila Postoffice?

141 A. It did.

Q. How was that issue of the newspaper El Renacimiento brought to the Manila Postoffice, and by whom?

A. It was brought by a messenger, supposed to be the messenger of the newspaper El Renacimiento.

Q. Please state to the Court how many copies of that newspaper passed through the Manila Postoffice of that issue?

A. Second class matter is accepted by weight, there was two hundred and twenty-three pounds of that issue of October 30th, 1908.

Q. Do you know how many ounces a copy of that newspaper El Renacimiento weighs?

A. I weighed several copies, and they weigh about two ounces each, or about eight copies to the pound.

Q. Will you state briefly the points to which that issue of that newspaper was sent through the Postoffice of Manila?

A. The newspaper El Renacimiento is circulated generally throughout the islands, and goes to all or practically all of the provinces.

Mr. SOUTHWORTH: That is all.

Sr. AGONCILLO: No cross-examination.

SANTIAGO PEREZ, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?

A. Santiago Perez.

142 Q. Where do you live.

A. At Pasay.

Q. What is your occupation?

A. Employee.

Q. Where are you employed?

A. In El Renacimiento.

Q. What are your duties as employee of the newspaper El Renacimiento?

A. I am in charge of the distributors of that newspaper here in the city of Manila, as well as those papers sent to the provinces.

Q. How long have you been so employed, or so engaged?

A. I am working there about five months.

Q. State to the Court whether or not you distributed the issue

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of the newspaper El Renacimiento of October 30th, 1908, and if so state how and where you distributed them?

A. We distribute that newspaper here in the city of Manila as well as in the provinces, every day with the exception of official holidays and Sundays.

Q. Was there any paper of any issue of the newspaper El Renacimiento published on holidays and Sundays?

A. No sir, on Sundays and holidays no paper is published.

Q. Do you mean to tell the Court that you have distributed every issue of the newspaper El Renacimiento since you have been employed there?

A. Yes sir.

143 Q. About how many copies of that newspaper El Renacimiento do you distribute in the city of Manila, and about how many in the provinces, or both together?

A. Altogether fifty-two hundred copies odd are distributed.

Q. Do you know the defendant here, Teodoro M. Kalaw?

A. I do not know Sr. Kalaw at all, because I go to the office at three o'clock, and do not go away except for a short time at five o'clock to take my "merienda", something to eat, and I do not see him at all.

Mr. SOUTHWORTH: That is all.

Sr. AGONCILLO: No cross-examination.

JUSTO LUKBAN, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?

A. Justo Lukban.

Q. Where do you live?

A. At No. 61 Calle Soler.

Q. What is your occupation?

A. Physician.

Q. Do you know the defendant, Teodoro M. Kalaw?

A. Yes sir.

Q. Do you know what his busines is, what is his occupation?

A. He is the director of El Renacimiento.

144 Q. As director of the newspaper El Renacimiento, what are his duties?

A. His duties are to take charge of the newspaper he directs.

Q. You mean to say he is the editor of El Renacimiento?

A. Yes sir.

Q. Does he himself write editorials for El Renacimiento?

A. It may be him, and it may be others.

Q. What duties has he as to the editorials written by the other editors of El Renacimiento?

A. He as director ought to read all, of all made by others he must have knowledge.

Q. And what control has he over the editorials written by the other editors?

CLOSE IN CENTER

A. I desire to make it known that what I am saying here now is what I know about the matter when I was director myself.

Q. Have you or not knowledge of the way the Spanish and bilingual new-papers are run in the city of Manila?

A. Make your question clear, I do not understand.

Q. Do you know what the custom is in running Spanish and bilingual newspapers in the city of Manila?

Sr. AGONCILLO: I object to the question.

The COURT: What do you wish to show by this witness

Mr. SOUTHWORTH: To show that Teodoro M. Kalaw is the director, and has had to write editorials for the paper, and to supervise and censure every editorial that goes into that paper.

145 The COURT: Ask the witness directly.

Q. As director of El Renacimiento, is it the duty of the defendant to read the editorials written by the other editors of that paper?

A. When I was director of La Independencia I believe- it to be my duty to read every article before it was published.

Q. Did you testify in another case here that the duty of the director of El Renacimiento was the same as that of the director of La Independencia?

A. I do not remember very well; what I wanted to do was to explain to the Court the responsibility of the director of a newspaper and the non-responsibility of the redactor jefe.

Q. Do you state now that you do not know what the duties of the director of El Renacimiento are?

A. No.

Q. Do you know what are the duties of the director of El Renacimiento?

A. I do not know his obligations as director of El Renacimiento, but I can tell the Prosecuting Attorney that I, as director of La Independencia, read——

The COURT: The witness has stated that he does not know.

Mr. SOUTHWORTH: That is all.

Sr. AGONCILLO: No cross-examination.

The hearing was then adjourned until eight o'clock in the forenoon of the following day.

146 DECEMBER 8TH, 1908.

Pursuant to adjournment the case was called this a. m., with the same appearances.

PEDRO AUNARIO, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?

A. Pedro Aunario.

Q. Where do you live?

A. I live in the Renacimiento building.

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Q. What is your occupation?
A. I am a journalist by profession.
Q. Where is the newspaper El Renacimiento published?
A. At No. 26 Calle Gunao, Quiapo.
Q. How long have you been connected with El Renacimiento?
A. Very nearly since the time of its organization.
Q. Do you know the defendant, Teodoro M. Kalaw?
A. Yes sir.
Q. How long have you known him?
A. Since I have been on El Renacimiento.
Q. Does he held any position on the newspaper El Renacimiento?
A. He is at present director of El Renacimiento.
Q. What are his duties as director of El Renacimiento?
A. His duties are to indicate what our work is, and to or-
147 der what each one of the redactors have to do, and the distribution of the work, and some other duties.
Q. Does he write editorials for the newspaper El Renacimiento?
A. Yes sir.
Q. Does he correct and revise and pass on the editorials written by the other editors?
A. As director he is the only one who is responsible.
Q. Does he correct and revise the editorials written by the other editors and published in the newspaper El Renacimiento?
A. Yes sir.
Q. Did he hold that position of director on the 30th of October, 1908?
A. Yes sir.

Mr. SOUTHWORTH: That is all.
Sr. AGONCILLO: No cross-examination.
Mr. SOUTHWORTH: I now offer in evidence Exhibit A.
Sr. AGONCILLO: No objection.
Mr. SOUTHWORTH: I also offer in evidence Exhibit B.
Sr. AGONCILLO: I object to the admission of Exhibit B., as evidence in this case.
The COURT: What is the object of this exhibit?
Mr. SOUTHWORTH: This is the exhibit which refers to W. Dean & Co., Limited. We desire to show that Mr. Worcester has been referred to in a previous article.
The COURT: For that purpose it may be received.
Sr. AGONCILLO: Exception.
148 Mr. SOUTHWORTH: I also desire to offer in evidence Exhibit C., which is an article in the newspaper El Renacimiento of October 26th, 1908, in which Commissioner Worcester's name is mentioned as in some of the paragraphs of Exhibit A., the editorial upon which the libel is declared.
Sr. AGONCILLO: Objected to on the ground that it is incompetent and immaterial.
The COURT: Objection overruled, it may be admitted for the purpose stated.
Sr. AGONCILLO: Exception.
Mr. SOUTHWORTH: The Government rests.

The COURT: Motion has been made for a continuance of the case to give the defense time to obtain what is considered as necessary and material evidence on the part of the defendant.

Mr. SOUTHWORTH: I ask that the motion be amended in accordance with the practice, and require counsel on the other side to state what they expect to prove by these witnesses.

The COURT: The defence will be given until ten o'clock in the forenoon of December 10th, to present affidavits to show what they expect to prove by these witnesses.

DECEMBER 10TH, 1908.

Pursuant to adjournment the case was called this a. m., with the same appearances.

The COURT: Affidavits having been presented by the de-
149 fence showing what they expect to prove if given time to obtain the necessary witnesses, and although the statement made is not sufficient to warrant a continuance of the case, yet inasmuch as the defense is evidently not prepared to go on with the case at present, a continuance will be allowed until January 11th, 1909, at eight o'clock in the morning, at which time the case will be concluded.

JANUARY 11TH, 1909.

Pursuant to adjournment the case was called this a. m., with the same appearances.

FELIX M. ROXAS, called in behalf of the defense, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?
A. Felix M. Roxas.
Q. Where do you live?
A. At No. 20 Calle Ayala.
Q. What is your occupation?
A. Attorney at Law, and President of the Municipal Board.
Q. Will you please state to the Court whether or not you, as such president of the municipal board of this city, had knowledge of the slaughtering of infected cattle in the Bay of Manila on one of the days of the month of October of last year, 1908?
150 A. I had knowledge that cattle had been slaughtered in the Bay of Manila, but I did not know whether they were infected, or not.
Q. Can you state to the Court where these cattle came from?
A. They came from a foreign port.
Q. Can you state from what foreign country these cattle came?
A. I do not know.
Q. Please state to the Court whether or not you took any steps with regard to this slaughtering of cattle in the Bay of Manila?
A. I asked that the matter be turned over to the Prosecuting Attorney for investigation.
Q. To whom was this request made?

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A. To the Municipal Board.

Q. Did you make this request by way of a motion presented to the Municipal Board?

A. It was a motion of mine, yes, sir.

Q. Will you kindly state to the Court what the request was that you made in that motion?

Mr. SOUTHWORTH: Objected to on the ground that it is incompetent, and immaterial, any motion that he presented to the Municipal Board.

The COURT: It is part of the relation of facts surrounding this slaughtering of cattle, I do not know what end they have in view, but I think it is proper at the present time.

151 A. Having heard that there had been a slaughtering of cattle in the city of Manila outside of the matadero, and which was a violation of the ordinances of the city, I asked that the matter be turned over to the Prosecuting Attorney.

Q. Against whom did you ask that they be prosecuted for noncompliance with the municipal ordinances?

A. Against those persons who were said to have caused the slaughtering of these cattle, Lack and Davis.

Q. And what action was taken by the municipal board in regard to this motion presented by you?

A. That the matter should be investigated first before taking any action.

Q. Was an investigation made?

A. Yes sir, an investigation was made.

Q. Will you kindly state to the Court what was the result of that investigation?

A. The matter was dropped, and no further action was taken.

Q. What was the reason that no further action was taken respecting your protest about this matter?

A. It appeared that in the slaughtering of these cattle there had been no intention to violate the municipal ordinance.

Q. Was there a report made in regard to this matter?

A. I believe there was a report made by one of the members of the municipal board.

Q. Was the motion presented by you presented to the municipal board in proper form?

A. It was verbal, not written, I presented the motion but I did not have much success with it.

152 Q. Does that verbal motion of yours appear in the minutes of the municipal board?

A. It must appear there.

Q. And the report in regard to the investigation of the matter, does that also appear in the minutes of the board?

A. That report came days after, and I do not remember whether it was verbal or in writing, but it must appear in the minutes of the board.

Q. Will you kindly tell us what the contents of that report were?

Mr. SOUTHWORTH: Objected to as incompetent, if it is in writing

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the writing is the best evidence, and if it is verbal the man who made the investigation and who knows the facts is the party who should testify as to this report.

The COURT: I do not think it is worth while to delay to get this report, the question may be answered though it is not of much importance.

A. I do not remember the details of the report, but my impression is that after making the investigation it was found that there was no reason to believe there was any intention of violating the ordinances.

Q. But were the ordinances violated or not?

A. I believe that they were.

Q. Were there any fees collected for that slaughtering of cattle?

A. Yes sir.

153 Q. After the slaughtering?

A. Yes sir.

Q. Will you kindly tell the court on what day this slaughtering of cattle took place?

A. I do not remember the date, but it was in the month of October.

Q. Who made the investigation in regard to this slaughtering of cattle?

A. The investigation was entrusted to the acting member, Mr. Wylie.

Q. Are you familiar with the contents of this report regarding the slaughtering of these cattle?

A. I have already stated what I know about it.

Q. Is this report in existence at the present time?

A. Yes sir.

Q. Where?

A. In the office of the Secretary of the Municipal Board

Q. Will you kindly state to the court whether or not you have read any issues of the Cablenews-American that referred to this matter?

A. Yes sir.

Q. I will hand you a copy of the Cablenews-American dated October 23rd, 1908, and will ask you to read the article which appears on the first page entitled "Death on Land or Water. Beef should be killed where," and continued on the fifth page and ending with the words "committee on mataderos?"

A. I have read it.

Q. Now please state if that article which you have just read is a correct version of what occurred in relation to this matter

154 at the session of the municipal board?

A. In a general way it is correct, with the exception of what appears in regard to the City Assessor and Collector. I do not remember whether what is stated in the article as to what was said on that occasion by the City Assessor and Collection was really said, and in regard to the facts stated in the article referring to Commissioner Worcester and the Director of the Bureau of Agriculture

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I do not remember very well, but in a general way what is stated about myself and the Municipal Board, that is true.

Q. Will you kindly state to the court whether or not you were telephoned by the editor of the "Renacimiento" asking you if this information that was published in the Cablenews-American was true?

A. I believe that I was telephoned one day in regard to this matter, and that I answered that in a general way the information was true.

Sr. AGONCILLO: I will now offer in evidence this copy of the Cablenews-American, dated October 23rd, 1908, and especially the article concerning which the witness has testified, and ask that it be marked Exhibit D. 11.

Mr. SOUTHWORTH: I object to the introduction of this paper on the ground that it is incompetent and irrelevant and immaterial.

The COURT: I believe it is competent evidence, the objection will be overruled.

Mr. SOUTHWORTH: Exception.

155 Sr. AGONCILLO: I ask leave to make a verbal motion as a result of the statement of this witness, and that is that this witness be instructed to order the Secretary of the Municipal Board to bring to the court everything which appears in the minutes of the Board relating to the matters about which this witness has testified, and also whatever record there may be of the report made by the acting member of the Municipal Board, Mr. Wylie, in order to determine upon examination whether or not there is anything therein which may be essential to the defense of this accused.

The COURT: The motion will be denied, as not in conformity with law.

Sr. AGONCILLO: Exception.

The COURT: Have you anything further to ask this witness, Sr. Agoncillo?

Sr. AGONCILLO: No sir.

Mr. SOUTHWORTH: No cross examination.

FREDERICK O'BRIEN, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. Frederick O'Brien.

Q. Where do you live?

A. Manila.

Q. What is your occupation?

A. Editor of the Cablenews-American.

156 Q. Will you kindly state to the Court whether or not the Cablenews-American was published on the 23rd day of October, 1908?

A. Yes sir, it was.

Q. I will hand you a copy of that newspaper, marked for identi-

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fication Exhibit D. 11., and will ask you to state to the Court if this is the paper you have just referred to as having been published on that day?

A. Yes sir, it is.

Q. Will you kindly state to the Court whether or not the information which appears in the article printed on the first page of that newspaper, entitled "Death on Land or Water. Beef should be killed Where?", and continued on the 5th page and ending with the words "committee on mataderos," is true?

Mr. SOUTHWORTH: Objected to on the ground, in the first place that it is a leading question, and an improper way to examine this witness, to submit to him a statement and ask him whether it is true or not.

The COURT: I think it is a short way to get at it, if that is your objection. I do not know what he is going to testify to, as to whether it is true or whether he knows anything about it; if you objected to the fact that the witness has not qualified himself to testify in regard to the truth of the matter contained in this particular article, I would sustain the objection.

Mr. SOUTHWORTH: Then I make that objection.

The COURT: The objection will be sustained on that ground.

Sr. AGONCILLO: Exception.

157 Q. Please state to the Court from whom you got that information?

A. From one of our reporters.

Q. What is the name of that reporter?

A. I do not know, but I think it was the reporter who does City Hall work.

Q. Will you kindly mention the name of that reporter, or the city editor?

A. The city editor is practically Mr. Boomer, he is practically the city editor.

Q. Is the city editor the one who gathers the news items or notices concerning the city of Manila?

A. No sir.

Q. Then who does gather this news?

A. I think Mr. Watson, I think so as that is his regular duty. But reconsidering the matter, from looking over the article to which you have referred, I think it was written by Mr. Patrick Gallagher, who is not now in the employ of the paper.

Q. Will you kindly state to the Court whether or not Mr. Patrick Gallagher wrote this article from data furnished him by Mr. Watson?

A. No, if Mr. Gallagher wrote the article he wrote it from data which he obtained himself at the session of the Municipal Board.

Q. What position was Mr. Gallagher holding on your paper at the time he wrote this article?

158 A. If I may explain; we made a change about this time and put Mr. Gallagher on this work, if I remember right, and if I might explain the reason why Mr. Gallagher I think wrote

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this article, it is because it is partly evidently taken from shorthand notes, and Mr. Gallagher is the only one in our office who writes shorthand.

Q. Were those shorthand notes taken by Mr. Gallagher, or by someone else connected with the Cablenews-American?

A. If shorthand notes were taken, they must have been taken by Mr. Gallagher.

Q. What position did Mr. Gallagher hold in the Cablenews-American when he obtained that information?

A. He was a reporter, but we change our report-s very often, and sometimes I act as a reporter.

Q. But on this particular day, October 22nd, 1908, who was the reporter?

A. We had six.

Q. Will you kindly state to the Court to which particular reporter you entrusted the work of collecting the news from the government offices on this day, October 22nd?

A. I think that Mr. Gallagher wrote this article and that he was designated to do that is my impression, because the article reads very much like his style of writing.

Q. Please state to the Court whether or not before publishing this article in question you were informed of it as editor of the paper by the author of it?

A. No.

159 Q. But this paper is the Cablenews-American of October 23rd, 1908, this newspaper marked Exhibit D. 11.?

A. Yes sir.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Have you any personal knowledge of the facts set out there in that article?

A. Yes sir.

Q. Did you get the facts yourself upon which that article was written, or did Mr. Gallagher or whoever wrote the article?

A. I had nothing to do with getting the facts, but I probably passed on them.

Mr. SOUTHWORTH: That is all.

RICARDO AGUADO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. Ricardo Aguado.

Q. Where do you live?

A. St No. 227 Calle Real, Ermita.

Q. What is your occupation?

A. Merchant.

Q. Will you kindly state to the Court whether or not you at any

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time received a communication from the Bureau of Agriculture referring to the importation of cattle from any foreign country to Manila?

160 A. Yes sir.

Q. Do you remember the contents of that communication?

A. I addressed letters on several occasions to the Bureau of Agriculture in regard to the importation of cattle, I do not know to what particular communication you refer to in asking that question.

Q. I will hand you a letter from the Bureau of Agriculture dated July 18th, 1908, marked for identification Exhibit D. 12., and will ask you to examine it?

A. Yes sir, I know this communication, it is addressed to me by the Acting Director of the Bureau of Agriculture and the Acting Chief Veterinarian of that Bureau.

Sr. AGONCILLO: I will now offer in evidence this letter which has just been identified by the witness as Exhibit D. 12.

Mr. SOUTHWORTH: Objected to on the ground that it is immaterial.

The COURT: What is the object of this, Sr. Agoncillo?

Sr. AGONCILLO: To show that the importation of cattle from Hongkong to Manila on this date was absolutely prohibited, and that the landing of these cattle which were slaughtered in the Bay of Manila was prohibited in the month of October.

The COURT: It is not necessary to prove that, I do not think it material but it may be admitted for the present. I do not see that it is material, but it may be proof which set forth in connection with the issuing of general orders might give it some weight, and it will be stricken from the record unless that is done.

161 Will you kindly state to the Court if you received that communication in your official capacity as Secretary of the Chamber of Commerce?

A. No sir, I received it as a private individual.

Sr. AGONCILLO: That is all.

Mr. SOUTHWORTH: No cross-examination.

JOSE MARIA ROMERO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. José Maria Romero.

Q. Where do you live?

A. Santa Mesa Heights.

Q. What is your occupation?

A. Director of El Mercantil.

Q. Will you kindly state to the Court if El Mercantil was published or not on the 23rd day of October, 1908?

A. It was published on that day.

Q. I will hand you a copy of El Mercantil dated October 23rd,

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1908, marked for identification Exhibit D. 13., and will ask you to read the article which appears in the fourth column of the first page entitled "El Gobierno General. Por los Pasillos.", commencing with the paragraph which begins with the words "Y entre tanto" down to and including the paragraph ending with the words "vecindario de Manila"?

A. I have read it.

162 Q. Will you kindly state to the Court where you got this information you have just read?

A. As a general rule the information from official centers is acquired directly by a representative of the redactor, but as a matter of fact in these official centers El Mercantil is looked upon as a foreign paper, and our representatives are not always able to get at the inside of things connected with official orders, what is done in regard to certain things etc., and in such cases we are obliged to put up with what they see fit to give us. The American newspapers, however, succeed in getting what they want, and whenever we are unable to obtain the information directly we are forced to take it from the American newspapers, and the information which is contained in the article which you have just handed me was along general lines published on the *say* day by the Cablenews-American. However people who came to our office on that morning and who were interested in this matter told me——

Mr. SOUTHWORTH: I object to this testimony on the ground that it is incompetent, as stating what people who came to his office said to him in regard to this matter, as hearsay.

The COURT: He is stating in a general way how he gets his information. Proceed.

WITNESS: And these persons confirmed the news which we had gotten from the Cablenews-American. And later on when a representative of El Mercantil went to the Ayuntamiento to obtain

163 the daily information from the Governor General it was spoken of more in detail and a lot of things were said which we did not dare to take the responsibility of publishing.

Q. Will you kindly state to the Court who it was that represented El Mercantil and went to the Ayuntamiento to learn the facts in relation to this matter?

A. The chief editor, Joaquin Pelliceno Camacho, a man whose veracity in matters of this kind I have had occasion to confirm on several occasions.

Q. And as a result of the information obtained by Sr. Camacho this article was written, is that not so?

A. Yes sir.

Mr. SOUTHWORTH: I object to the last stat-ment of the witness and ask that it be excluded; he says as a result of information obtained from somebody else this article is true.

The COURT: That simply destroys the value of his evidence and if you strike it out you have not got it destroyed. The whole of his evidence up to this time has no value unless it is connected in some way or other, and he destroys it entirely by saying that he got it

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from hearsay. I think you had better let it stand until we see what is in it.

Mr. SOUTHWORTH: Then I withdraw the objection.

Sr. AGONCILLO: I now offer in evidence this newspaper marked Exhibit D. 13, containing the article about which this witness has testified.

164 Mr. SOUTHWORTH: Objected to as incompetent, irrelevant and immaterial, and on the further ground that the witness states that he knows nothing of the facts contained in this article except what he got from someone else.

The COURT: Objection sustained.

Sr. AGONCILLO: Exception.

The COURT: Anything further with this witness, Sr. Agoncillo?

Sr. AGONCILLO: Nothing more.

Mr. SOUTHWORTH: No cross examination.

JOSE FLAMEÑO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. José Flameño.

Q. Where do you live?

A. At No. 340 Paseo Azcarraga.

Q. What is your occupation?

A. Importer of cattle.

Q. Will you kindly state to the Court how long you have been importing cattle?

A. About twelve years now.

Q. Will you kindly state to the Court whether or not you imported cattle from Hongkong to Manila or any other point in the Philippine Islands?

A. Regularly from the year 1900 to 1907, and to the middle of the year 1908, I received a lot of cattle from Hongkong
165 and some from the provinces, and also from Indo-China, Saigon.

Q. As such importer of cattle did you receive any communication from the Bureau of Agriculture regarding the importation of cattle from Hongkong to Manila?

A. I remember having received a communication stating that three consecutive loads of infected cattle had arrived from Hongking, and then I learned that the entry of infected cattle from Hongkong to Manila was absolutely prohibited.

Q. Then it is true that there were three shipments of infected cattle brought from Hongkong to Manila?

A. According to the inspection made by the veterinarian it was said there had been three shipments of infected cattle from Hongkong to Manila, and for that reason we stopped importing cattle from Hongkong, owing to General Order No. 10 which was in force then.

Sr. AGONCILLO: I will now show you a letter from the Bureau of

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Agriculture, dated July 11th, 1908, marked for identification Exhibit D. 14., and will ask you to examine it and to state if this is the communication you have referred to in your testimony?

A. Yes sir, it is.

Q. Please state to the Court whether or not since the date of receiving this communication you have imported cattle from Hongkong?

A. No sir, I have not.

Q. Do you know of any other importers of cattle who have imported cattle from Hongkong to Manila in the month of October, 1908?

166 A. Yes, I know that an American firm here, Lack and Davis, has brought cattle here from Hongkong during the month of October.

Q. Will you kindly state the date when these cattle arrived here which were imported by Lack and Davis from Hongkong?

A. I cannot give you the exact date, but I remember that it was in the month of October.

Q. Will you kindly state to the Court the name of the steamer or steamers upon which these cattle were brought from Hongkong to Manila by Lack and Davis?

A. I cannot give you the name of the steamer that brought these cattle, but I believe you can obtain that information from the agents of the steamer.

Q. Can you tell us whether or not these cattle that were brought here from Hongkong by Lack and Davis were infected with any disease?

A. I cannot tell you whether they were infected or not, but I know that several loads of cattle were not landed, that they were either slaughtered in the Bay of Manila, or put on a lighter in the Bay.

Q. The cattle slaughtered were deposited in a lorcha?

A. No sir, part of the cattle that arrived here were slaughtered in the Bay, and part is at the present time on board a lorcha.

Q. Did the cattle that were put on board the lorcha come from Hongkong?

A. Yes sir, from Hongkong.

167 Q. When did these cattle arrive?

A. I do not know the exact date when they arrived.

Q. And those that were slaughtered in the Bay, when did they arrive?

A. In the month of October.

Q. How many head of cattle were slaughtered?

A. I do not remember.

Q. Will you kindly state to the Court whether or not you presented a petition to the Governor General protesting against the importation of cattle from Hongkong?

A. Yes sir.

Q. By whom was that protest signed besides yourself?

A. It was signed by Alberto Modesto, Pedro Picornell, Aldecoa & Company, and myself.

Q. Do you know where that protest is now?

A. We turned it over to the Governor General.

Q. Did the Governor General acquaint himself with the contents of that protest at the time you presented it to him?

A. He took note of that protest.

Q. And did the Governor General say anything in regard to this matter to you?

A. He stated that he would talk the matter over with Mr. Worcester.

Q. You have stated that you ceased to import cattle from Hongkong on account of this letter which you received from the Bureau of Agriculture, Exhibit D. 14.?

A. Yes sir, we ceased importing cattle from Hongkong after having received this communication.

168 Q. Were you caused any damage in your business on account of your not being able to import cattle from Hongkong?

Mr. SOUTHWORTH: Objected to as immaterial.

The COURT: Objection sustained.

Sr. AGONCILLO: Exception.

Q. Will you kindly state to the Court whether or not Mr. Dean C. Worcester bought from you cattle at any time?

Mr. SOUTHWORTH: Objected to as immaterial.

The COURT: I do not know what they are driving at yet, the witness may answer.

A. I remember that *on* or about the month of September he bought one head of cattle, which was "immunized."

Q. And did you receive payment for this head of cattle?

A. Yes sir, I received in payment one hundred pesos.

Sr. AGONCILLO: I now offer in evidence this letter, Exhibit D. 14., which has been identified by this witness.

Mr. SOUTHWORTH: Objected to as immaterial.

The COURT: It may be received in the same way as the other for the present, and I will see whether it is connected later on.

Q. Did you send somewhere by rail the head of cattle bought by Mr. Worcester?

A. It was sent to the depot, but I don't know to what place it was sent.

Q. What line?

A. I do not remember, but I must have a minute of it somewhere.

Q. Was it shipped in your name?

169 O. It was shipped in the name of a nephew of Mr. Worcester.

Q. By whose order did you ship it this way?

A. By order of Mr. Worcester.

Q. Mr. Dean C. Worcester?

A. Yes sir, Mr. Dean C. Worcester.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Did I understand you to say that there had been various shipments of cattle slaughtered in the Bay, the meat brought into Manila of infected cattle killed in the Bay?
A. No sir, only one shipment.

Mr. SOUTHWORTH: That is all.

The hearing was then adjourned until half past two o'clock in the afternoon.

Afternoon Session.

Pursuant to adjournment the case was called this p. m., with the same appearances.

ISIDORO LOYZAGA, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?
A. Isidoro Loyzaga.
Q. Where do you live?
170 A. At No. 131 Calle Anda.
Q. What is your occupation?
A. Director of the newspaper "El Comercio."
Q. Will you kindly state to the Court whether or not the newspaper "El Comercio" was published on the 24th day of October, 1908?
A. It was.
Q. I will hand you a copy of that newspaper dated October 24th, 1908, marked for identification Exhibit D. 15., and will ask you to state if this is an issue of that paper "El Comercio"?
A. Yes sir, it is.
Q. Will you please look at the article on the third page entitled "La Autoridad Municipal por los Suelos"?
A. Yes sir, I know that article.
Q. Will you kindly state to the Court from whom you obtained the information contained in this article?
A. It appears from the article itself that I got it from the Cablenews-American of the previous day.
Q. And the opinion expressed in the last paragraph commencing with the words "Hasta aquí habla" and ending with the words "por los suelos", is the judgment you formed yourself with regard to this information which you say you got from the Cablenews-American?
A. Yes sir.

Sr. AGONCILLO: I will now offer in evidence this issue of the newspaper "El Comercio" containing the article referred to by the witness, and marked Exhibit D. 15.

171 Mr. SOUTHWORTH: I object to the introduction of this paper on the ground that it is incompetent and immaterial,

in that it is merely a conclusion and deduction formed by the witnes from an article which he read in the Calbenews American.

The COURT: It is incompetent as it stands now, but it might be material if it is attempted to show mitigation or justification for the publication of the article in question which is complained of. It is only in that sense admissible, the same as the copy of "El Mercantil" which has been offered in evidence.

Q. Will you kindly state to the Court, in your capacity as director of "El Comercio", what was the general opinion of the press in regard to this slaughtering of cattle in the Bay of Manila?

Mr. SOUTHWORTH: Objected to on the ground that it is incompetent and immaterial, as to what was the opinion of the press.

The COURT: Objection sustained.

Sr. AGONCILLO: Exception.

The COURT: Anything further with this witness?

Sr. AGONCILLO: Nothing further.

Mr. SOUTHWORTH: No cross-examination.

Sr. AGONCILLO: I offer in evidence a certified copy of the motion presented by the President of the Municipal Board referred to in the testimony of Sr. Roxas this morning.

The COURT: Let the record show that the Clerk of the Municipal Board came into court with the records including the action
172 of the Municipal Board taken upon the motion made by the Alcalde to the Board in relation to the slaughtering of cattle in the Bay of Manila.

The Defense then offered in evidence the motion presented by the Alcalde to the Board, with the action of the Board in refusing to adopt it. The record was received and will be substituted by a certified copy of the municipal record, which will be marked Exhibit D. 16.

CHARLES P. JARMAN, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. Charles P. Jarman.

Q. Where do you reside?

A. At No. 4 Virginia Avenue, Santa Mesa Heights.

Q. What is your occupation?

A. Chief of the Marine Division of the Manila Custom House.

Q. How long have you held the office of Chief of the Marine Division of the Custom House?

A. Since March 2nd, 1908.

Q. Will you kindly state to the Court whether or not the office of the Collector of Customs has issued permits for the landing of cattle from Hongkong in the Bay of Manila on the last days of October, 1908?

A. Yes sir.

Q. Can you state to the Court on what date these cattle
173 -rived here?

A. Which cattle?
Q. That came from Hongkong?
A. Do you refer to the cattle of Lack and Davis?
Q. In general, not specific only.
A. Any time they came in we gave them permits subject to veterinary conditions.
The COURT: The question is: can you give the dates?
A. Only through the permits.
Q. Were some of the cattle brought to Manila consigned to Lack and Davis on the last days of October, 1908?
A. I cannot say without looking at the records.
Q. I will show you the records of cattle arriving on the steamers "Zafiro" and "Rubi" on the last days of October?
A. These cattle were delivered to Michael & Company, who have a general bond on file with the Custom House, they were taken under bond and without seeing the manifests and papers pertaining to that I could not say whether these cattle came on the "Rubi" or not, although I think so.
Q. Among the permits you have before you now, is there one dated October 20th, 1908?
A. Yes sir, I have that here.
Q. How many head of cattle are referred to in that permit?
A. Forty-one.
Q. Where did these cattle come from?
A. I cannot state positively, but as far as I know they came from Hongkong.
174 Q. Has this permit anything to do with the authorization of the Bureau of Agriculture?
A. Yes sir, the cattle were to be discharged subject to the inspection of the veterinary.
Q. Will you kindly state to the Court whether or not you needed a special authorization from the Bureau of Agriculture before issuing that permit for the landing of these cattle?
A. The guard in the Bay does, I do not.
Q. Do you not have to have permission from the Bureau of Agriculture before issuing this permit?
A. No sir, but the guard in the Bay will not discharge them until he has authority.
Q. Is not this guard in the Bay an employee of the Custom House?
A. Yes sir.
Q. Is he the person who receives the order from the Bureau of Agriculture permitting the landing of the cattle?
A. He should.
Q. Is it not true that the Collector of Customs is the one who receives that communication from the Bureau of Agriculture?
A. No, the permit is generally given to the Inspector in charge of the ship, so that there will not be any delay in landing the cargo.
Q. And this inspector on guard is the one who receives the order from the Bureau of Agriculture?
175 A. Yes sir, it should be handed to him.
Q. Is not the course followed by the Collector of Customs

that a permit cannot be issued for the landing of cattle from a foreign country, without first obtaining the authorization of the Bureau of Agriculture for the landing of these cattle?

A. That is given on board ship, the inspector on board receives it as representative of the Collector of Customs.

Q. What is the name of that inspector who was on duty on October 20th last?

A. I do not know, I would have to find out by looking at the records, that is under another division.

Q. Does the Custom House have a record in regard to permits?

A. Yes sir.

Q. Will you kindly explain to the Court in which way that record is kept?

A. The guard on board ship takes the permit and turns it into his Chief, and it is kept on file there.

Q. From whom does that permit come?

A. From the veterinarian.

Q. And afterwards to whom is that permit delivered?

A. I presume to the Chief of his Division.

Q. What division is that?

A. The Inspectors' Division.

Q. Will you kindly state to the Court whether or not in relation to this permit for the landing of these forty-one head of cattle, there was a permit from the Bureau of Agriculture dated October 20th last?

176

A. This permit you see there was cancelled and another permit issued in the place of it.

Q. My question is: whether or not that permit has any relation with the communication from the Bureau of Agriculture authorizing the landing of these forty-one head of cattle?

A. This permit was first issued for the landing of these cattle, and then they were informed that the cattle were diseased, and this permit was withdrawn and another one issued.

Q. These cattle were infected?

A. Yes sir.

Q. These cattle were slaughtered in the Bay?

A. That I do not know, I gave them a permit to put these cattle on a separate lighter with a guard until the proper documents were presented.

Q. When was that?

A. The same day.

Q. Were not some of these cattle slaughtered in the Bay?

A. That I do not know, I know from outside but as far as the Custom House is concerned I do not know.

Q. Will you kindly state to the Court if you have among the papers you have brought with you the communication addressed by the Bureau of Agriculture to the Collector of Customs which refers to these infected cattle?

A. Not here now.

177 Q. Is there any document of that kind?

A. I do not know, there is not in my division.

Q. In what division do you think that paper would be found?
A. In the Inspectors' Division, that is the authority should go there, it may be by word of mouth, but they have the authority for letting these cattle go.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. On what ship were these cattle brought in?
A. On the steamship "Rubi."

Mr. SOUTHWORTH: That is all.

JOAQUIN PELLICENO CAMACHO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?
A. Joaquin Pellecino Camacho.
Q. Where do you live?
A. At No. 602 Santa Mesa.
Q. What is your occupation?
A. Journalist.
Q. I will hand you a copy of the newspaper "El Mercantil" dated October 23rd, 1908, and marked Exhibit D. 13., and will ask you to read the article which appears on the first page entitled "El Gobierno General. Por Los Pasillos" from the paragraph commencing with the words "Y entre tanto" down to and including the paragraph ending with the words "vecindario de Manila."
178 A. I have read it.
Q. Please state to the Court how you learned of these facts?
A. The first information I had in relation to this matter was obtained from what I read in the Cablenews-American of what happened in a meeting of the Municipal Board, and as it appeared to be a matter of great public importance and a grave violation of the ordinances of the city we tried to ascertain the truth of the news, and were enabled to verify it by going to official centers, and from that investigation we learned that the article published in the Cablenews-American was in a sense true, and that it was confirmed by the minutes of the municipal board in a sense that all these facts were a public matter in the papers.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Did you go to the municipal board yourself?
A. No sir.
Q. Did you go to the Executive Bureau in regard to the matter?
A. Yes sir.

Q. Then the information that was gotten from the municipal board was obtained by someone else, was it?

A. Yes sir, from a companion who took notes of the facts and gave them to me.

Q. Now what information did you get from the Executive Bureau in regard to this matter?

179 A. I would like to know what you mean by Executive Bureau, Mr. Attorney?

Q. The place where you went; you stated that you went to the Executive Bureau, did you not?

A. I go every day to the office of the Governor General and to the different bureaus of the government, and in conversation with some of the employees obtain information daily.

Q. From what employee did you obtain any information?

A. What information?

Q. The information which you say you obtained in regard to this matter, about which you have testified.

A. It was not from any one particular employee, it was obtained from different persons.

Q. Give us the names of these different persons?

A. I do not remember the names.

Q. Give us the name of one of these persons?

A. Every day I go there, and I cannot state positively to whom I talked every day.

Q. We are talking about this particular information you say you obtained there about this particular matter?

A. I remember that on that day there was almost nothing else spoken of except that subject, and I talked with the persons whom I met that day in the office of the Governor General, and I was able to verify the news.

Q. Can you give us the name of a single person you talked to on that day about that matter?

180 A. I would not be able to remember exactly.

Q. Did you talk to the Governor General about it?

A. I do not remember whether the Governor General received me on that day, as a general rule he used to receive the reporters every day.

Q. Do you remember whether you got any of this information from the Governor General?

A. I remember that some time we spoke to the Governor General about this matter, but I cannot state exactly whether we talked to him on that day or not.

Q. Will you state that the Governor General gave you any of the information that you put in your paper in regard to this matter on that occasion?

A. On that day I do not remember of having spoken to the Governor General in regard to this matter. I do on other occasions but on that day I do not remember.

Q. Did you talk with the Governor's private secretary, Mr. Enright?

A. I used to talk to him daily.

COPY, POUND

Q. I ask you about this particular matter on that particular day, did you talk with Mr. Enright, the Governor's private secretary?

A. I cannot state exactly whether I talked to Mr. Enright or not.

Q. Did you talk to the Executive Secretary, Mr. Carpenter?

A. I used to talk to him almost daily.

Q. Did you talk to him about this matter about which you have testified on that day?

181 A. I remember having spoken to Mr. Carpenter in regard to this matter, but I do not remember on what day.

Q. You state in this article that the municipal board was a bureaucratic dependency of the Secretary of the Interior; where did you get that information?

A. Allow me to tell you that that is not a part of the information, that is merely a conclusion of the newspaper.

Q. You state in this article that this was the second time that Lack and Davis had committed this act, the killing of cattle in the Bay; where did you get that information?

A. It was already printed in the Cablenews-American, which [illegible] the basis of the information from which I wrote the article.

Q. Then you got your information on that point from the Cablenews-American, did you?

A. The information of the Cablenews-American was the basis of our information, and if as a result of our investigation it had been proven that the information of the Cablenews-American was not correct we would not have published it, we would have left the responsibility of publishing it to that newspaper. The reason we published it was because we believed the facts were exactly proven in that sense.

Q. Now you state in this article that the municipal board virtually resolved that the Secretary of the Interior and even the Director of Agriculture can suspend temporarily and executively an

182 ordinance of the municipal board without a resolution of the Council and even without its knowledge?

A. Yes sir.

Q. Where did you get that information?

A. I beg of you to pay attention to that paragraph, Mr. Attorney, that is not derived from any information, but is merely an opinion of the paper; if the newspaper thought that killing of cattle in the Bay of Manila under such conditions constituted an infraction of a municipal ordinance, it was authorized by the Insular authorities to do so.

Q. Can you give us the name of a single man or official connected with the office of the Governor General from whom you got information on this subject, information in regard to the killing of these cattle, the matter about which you wrote in this article in "El Mercantil?"

A. I do not remember now, it was a matter of daily information, and at this moment I do not remember from whom I obtained the information that morning.

Q. Can you give us his official capacity?

A. Who?

Q. Of any one man from whom you received information in regard to this matter, connected with the municipal board or with the office of the Governor General?

A. If the information came direct to ourselves I might remember, but as the article published was taken from another newspaper I do not remember. I do not pay much attention to the persons who bring the facts as published; on that point I have a
183 great deal to carry and it is impossible for me to remember from whom I receive information every day, and if I tried to answer that question I might easily be mistaken.

Q. You talked a good deal of being informed yourself and getting information in regard to this matter?

A. No sir, it was public news already.

Q. Did you not state you got information about it, at the office of the Governor General or the Executive Secretary?

A. We newspaper men had spoken in regard to this matter with the Executive Secretary as well as the Governor General, as I have stated, but I could not give you any particular date or in which way we got the information, it might have been given to a collection of newspapers.

Q. Did you get any information from the Governor General or the Executive Secretary about this matter?

A. As I have stated to you we spoke several times with the Governor General and to the Executive Secretary in regard to that matter of the cattle.

Q. Well did you get any information from them about it?

A. From the Governor General and the Executive Secretary?

Q. Yes.

A. The Executive Secretary, as I remember, only exchanged impressions, but I remember the Governor General mentioned the affair and gave us a version of the affair.

Q. Did the Governer General give you the version of the affair which you printed in "El Mercantil?"

184 A. What day do you mean

Q. The day on which the article, to which your attention was called as an exhibit in this case, was published in "El Mercantil", October 23rd, 1908?

A. On that day I do not remember whether I spoke to the Governor General, or not.

Q. Did you get the information from which you published that article from the Governor General on that day or any other day?

A. On one occasion the Governor General spoke to us about this matter.

Q. Did you get that information from him on that occasion when he spoke to you about this matter which you published in "El Mercantil"?

A. I do not remember whether it was on that day or another day. I know the Governor General spoke to us about this matter, but I do not remember when.

Q. Did you get that information from him on any day?

COPY BOUND C

A. Yes sir, one day the Governor General spoke to us about this matter.

Q. And he gave you the information which you published in this article, did he?

A. No sir, this article has nothing to do with the statement of the Governor General.

Q. Then from whom did you get that information?

A. As I have stated I obtained it from the Cablenews-American, and a part of it I got from official centers of information.

Mr. SOUTHWORTH: That is all.

185 CHARLES P. JARMAN, recalled by the defendant, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. Will you kindly state to the Court if this document which I now hand you is the permit for the unloading of the forty-one head of cattle from the steamer "Rubi"?

A. Yes sir, the permit for unloading from the steamer to a lighter under guard, but not for delivery.

Q. Will you kindly look at this communication dated October 20th, 1908, marked for identification Exhibit D. 17., and state whether or not you received it from the Bureau of Agriculture?

A. The Collector of Customs received it. I received it from the Deputy Collector.

Sr. AGONCILLO: I will not offer in evidence these two documents which have just been identified by the witness, as Exhibit D. 17., and Exhibit D. 17 (*a*).

The COURT: There being no objection they may be received.

Sr. AGONCILLO: That is all.

Mr. SOUTHWORTH: No cross-examination.

CONSTANTINO CABALLERO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DIOKNO:

Q. State your name?

A. Constantino Caballero.

Q. Where do you live?

186 A. At Neuva Ecija.

Q. What is your occupation?

A. I am a cook by trade.

Q. Do you know Mr. Dean C. Worcester?

A. I know him, because formerly he was my master.

Q. Since when have you known him?

A. I cannot tell exactly how long, but I believe a little over five years.

Q. Do you know whether or not Mr. Dean C. Worcester has any property in Nueva Ecija?

A. He told me himself that the hacienda at Mataz na Cahay was his property.

CLOSE IN CENTER

Q. Where is that Mataz na Cahay?
A. In the jurisdiction of Bongabong.
Q. Do you know that hacienda?
A. I know it because I live there.
Q. Since when have you been living there?
A. About ten months now.
Q. How did you learn the fact that that hacienda belonged to Mr. Dean C. Worcester?
A. Mr. Worcester came there one time. I do not remember the month, and asked me how his hacienda was getting on, and I replied that it was all right.
Q. Do you base your belief that that hacienda belonged to Mr. Dean C. Worcester on any other fact?
A. Mr. Worcester's nephew's wife told me that it belonged to the two of them.

Mr. SOUTHWORTH: I object to this and ask that it be excluded.

187 The COURT: He has told how he arrived at this, it is the only way he gets this information and if you strike it out you will not have that.

Mr. SOUTHWORTH: I withdraw the objection.

Q. What is the name of that nephew of Mr. Dean C. Worcester?
A. Mr. E. L. Worcester.
Q. Do you know that nephew of Mr. Worcester?
A. He is my master now.

Sr. DIOKNO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. The only reason you have for saying that that hacienda belonged to Mr. Dean C. Worcester is that Mr. Worcester's nephew's wife said that it belonged to Mr. Worcester?
A. Yes sir.
Q. And the wife of Mr. Worcester's nephew said that it belonged to her and her husband, did she?
A. No sir, I was told it belonged to him and his uncle.
Q. That is the only reason you have for saying to Mr. Worcester and his nephew: what Mr. Worcester's nephew's wife told you about it?
A. Yes sir.

Mr. SOUTHWORTH: That is all.

Redirect examination by Sr. DIOKNO:

Q. You have stated in direct examination that you learned that this hacienda belonged to Mr. Dean C. Worcester because you
188 you were so informed by Mr. Dean C. Worcester: when did that take place?
A. Yes sir, I was so informed.
Q. How did that take place, in what way?

COPY BOUND C

A. You asked me about it and I replied and what I answered is the truth.

Q. Will you kindly repeat the exact words used when the question was addressed to you?

A. He asked me how was his hacienda and I told him it was all right, to which he replied to me that he was glad it was getting big now.

Q. In what language did he talk to you?

A. In Spanish.

Q. Please repeat the exact words in Spanish which were used by Mr. Dean C. Worcester when he spoke to you about this matter?

A. Constantino, que te parece con mi hacienda muy bonito, muy grande, and I replied, Si Señor.

Q. How long did Mr. Worcester stay in that hacienda on that occasion?

A. He arrived there at twelve o'clock, passed the night there, and went away the next day.

Sr. DIOKNO: That is all.

Recross-examination by Mr. SOUTHWORTH:

Q. When was it that you had this conversation with Mr. Dean C. Worcester?

A. When he went there.

189 Q. When was that?

A. I forget what month it was that Mr. Worcester went there.

Q. What year was it?

A. This year.

Q. Can you not tell about what month it was?

A. I do not know whether it was September or November.

Q. Where did this conversation occur?

A. There near the house, on the ground.

Q. Was there anybody present?

A. No sir, only the two of us.

Q. What was your occupation there at that place?

A. I am the cook of his nephew.

Q. How long had you been cook of his nephew there?

A. Ten months now.

Mr. SOUTHWORTH: That is all.

Redirect examination by Sr. DIOKNO:

Q. In what month did you start to work for the nephew of Mr. Worcester?

A. In March last.

Q. Was it this year or last year that Mr. Worcester went there when you had this conversation with him concerning the hacienda?

A. This year.

Q. 1908 or 1909?

A. 1908.

Sr. DIOKNO: That is all.

CLOSE IN CENTER

Mr. SOUTHWORTH: Is this year 1908?
A. Now it is 1909.

190 The COURT: In answer to the subpœna served on Mr. Dean C. Worcester calling for the account of the bullock sold by José Flameño in December 1908, he states that he has no such account as that called for by the subpœna, and never had one.

The hearing was then adjourned until the following morning at eight o'clock a. m.

JANUARY 12TH, 1909.

Pursuant to adjournment the case was called this a. m., Mr. Southworth representing the government, Srs. Agoncillo, Salas and Diokno and Sr. Felix Ferrer the defendant, Teodoro M. Kalaw.

E. S. CROMWELL, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO

Q. State your name?
A. E. S. Cromwell.
Q. Where do you reside?
A. Manila.
Q. What official position do you hold, if any?
A. At present Acting Collector of Internal Revenue.
Q. Will you kindly state to the Court if you are Acting Collector and Assessor of the City of Manila?
A. Ex officio.

Q. Will you please state to the Court whether or not you
191 had knowledge of the slaughtering of cattle in the Bay of Manila on one of the days of October last?

A. No personal knowledge, I knew of it from hearsay but I have not seen it.

Q. Please state to the Court whether or not you collected fees for the slaughtering of these cattle in the Bay of Manila?
A. Yes sir.
Q. On what day?
A. I do not remember the date.
Q. Where were these cattle slaughtered?
A. As I understand they were slaughtered in the Bay of Manila on board of a lighter.
Q. How many head of cattle were slaughtered?
A. I could not state, I do not remember the number.
Q. Will you kindly state to the Court how much the fees amounted to for the slaughtering of these cattle?
A. One hundred and seven pesos I think, something like that.
Q. Knowing the amount charged as fees for the slaughtering of these cattle in the Bay of Manila, undoubtedly you would know the number of head of cattle which were slaughtered?
A. The fees are not so much per head but so much per kilo of dressed meat, and I do not know the weight of each animal.

Q. Can you state whether or not the meat of these cattle which were slaughtered in the Bay were brought to the Matadero for the purpose of being used?

192 A. I never heard of it being brought to the Matadero.

Q. Was not this meat used there?

A. No, they do not use meat at the Matadero, that is where the cattle are slaughtered.

The COURT: The question is whether the meat was consumed or not?

A. I could not state positively, but I think it was sold for consumption.

Q. Who paid you the fees?

A. A representative of Lack and Davis.

Q. Can you tell the Court where these cattle came from that were slaughtered in the Bay?

A. I do not know.

Q. Don't you know even the steamer that brought them here?

A. I do not know.

Sr. AGONCILLO: That is all.

Mr. SOUTHWORTH: No cross examination.

GUILLERMO BUENAVENTURA, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DIOKNO:

Q. State your name?

A. Guillermo Buenaventura.

Q. Where do you live?

A. At Cabanatuan, Nueva Ecija.

Q. What is your occupation?

A. Municipal treasurer, and also postmaster.

Q. Do you know Mr. Dean C. Worcester?

193 A. Yes sir.

Q. Since when have you known him?

A. If I am not mistaken I have known him personally from August of last year.

Q. Where did you see him for the first time?

A. At Cabanatuan, in the house of Mr. Walter J. Robb.

Q. How did you see him on that occasion?

A. Because before Mr. Worcester arrived his nephew, E. L. Worcester, came to me and told me that his uncle, the commissioner Dean C. Worcester, was about to arrive and that he would like to have a horse for him to rice as he was going to a place called Mataz na Cahay. I succeeded in getting the horse and I told the party from whom I got the horse that I needed the horse for the commissioner.

Q. Did Commissioner Worcester go to Mataz na Cahay on that occasion?

A. He went.

Q. Do you know if Mr. Dean C. Worcester has any property there?

A. I know that he has.

Q. What property has he got there?

A. The hacienda of Mataz na Cahay.

Q. Were you at any time employed by the nephew of Mr. Dean C. Worcester?

A. Yes sir.

Q. When, and what position did you have?

A. If I am not mistaken I commenced to be an agent of his nephew in the month of July, 1908.

194 Q. As agent of the nephew of Mr. Worcester, can you tell us if Mr. Worcester has sent there some head of cattle for the use of that hacienda?

A. Yes sir, he sent twice.

Q. How many head of cattle did he send the first time?

A. The first time he sent one head.

Q. And the second time?

A. The second time he sent three head of cattle.

Q. I will show you a letter dated September 15th, 1908, marked for identification Exhibit D. 18, and will ask you to state if you know it?

A. I know this letter.

Q. Who signed that letter?

A. Mr. Dean C. Worcester.

Q. Do you know the signature of Mr. Dean C. Worcester?

A. I do.

Q. When did you see that letter for the first time?

A. In the month of September of last year.

Q. How and under what circumstances did you see that letter?

A. As I have stated I was the business agent of the nephew of Mr. Worcester, and this letter came into my possession because it was sent by a teacher by the name of Walter J. Robb.

Q. Was the head of cattle mentioned in that letter received there?

A. Yes sir.

Q. That was the first of the cattle received there?

A. Yes sir.

195 Q. Where was that head of cattle sent, if you know?

A. It was sent to his nephew at Mataz na Cahay.

Sr. DIOKNO: I now offer in evidence this letter which has just been identified by the witness, as Exhibit D. 18.

The COURT: There being no objection it may be received.

Q. And the second shipment of cattle there, when did it take place?

A. If I am not mistaken in the month of October, 1908.

Q. Did you receive any telegram from Mr. Dean C. Worcester?

A. Yes sir.

Q. When?

A. In the month of October, 1908.

Q. About what?

Mr. SOUTHWORTH: I object to that until counsel produces the telegram, but with the understanding that they will introduce the telegram later I will withdraw the objection.

A. Concerning the three head of cattle he sent there in the month of October, 1908.

Q. Did you receive that telegram before or after you received the cattle?

A. I was not there at the time, I was at Malolos in the month of October, but upon my return to Cabanatuan I found the cattle and telegram there.

Sr. DIOKNO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. You say you know the signature of Mr. Dean C. Worcester?

196 A. Yes sir.

Q. And you state that the signature on the letter marked Exhibit D. 18, is the signature of Mr. Dean C. Worcester?

A. Yes sir.

Q. You are positive of that, are you?

A. I am positive that that is his signature.

Q. Why does not the very signature itself show that it is signed by someone else?

A. (No answer, the witness intent on examining the signature).

Q. Do you see the little z. marked there under the signature: is that a part of Mr. Worcester's signature?

A. That is his signature.

Q. Mr. Dean C. Worcester always puts that little z. on to his signature, does he?

A. (No answer from the witness, who is still examining the signature).

Q. Have all the signatures you have seen of Mr. Dean C. Worcester that little z. under the right hand corner of the signature?

A. (No answer, witness still examining signature).

Q. You did not see that little z there when you swore that was the signature of Mr. Worcester, did you?

A. (No answer).

Q. Do you still state to the Court that the signature on this letter, Exhibit D. 18, is the signature of Commissioner Worcester?

A. This signature here is very much similar to the signa-

197 ture of Commissioner Worcester.

Q. Did you ever see Mr. Dean C. Worcester write his name?

A. I have not seen him writing his name, but I have seen his signature.

Q. Well did the signature you saw have this little z. as a part of it?

A. I cannot tell you whether that little z was there or not.

Q. Now you state that Mr. Dean C. Worcester owns a hacienda at Mataz na Cahay?

A. Yes sir.

Q. State how you know that Mr. Dean C. Worcester owns that hacienda?

A. I know because I heard Mr. Worcester asking his nephew "how are the plants on our hacienda?"

Q. You were not present when Mr. Dean C. Worcester bought that hacienda, were you?

A. I do not know anything about that.

Q. Did you ever see any deed or writing conveying title to that hacienda to Mr. Dean C. Worcester?

A. I don't know anything about that.

Q. All you know about it is that you heard Mr. Worcester asking his nephew "how are the plants on our hacienda?"

A. Yes sir.

Q. Well Mr. E. L. Worcester was in charge of that hacienda, was he not?

A. So I understand.

Q. And you were the agent of Mr. E. L. Worcester up
198 there, were you not?

A. Yes sir.

Q. Did Mr. Dean C. Worcester have anything to do with employing you?

A. No sir.

Q. Now where was it that you heard Mr. Worcester asking his nephew, Mr. E. L. Worcester, "how are the plants on our hacienda?"

A. In the house of Mr. Walter J. Robb.

Q. Was Mr. Robb present at the time Mr. Dean C. Worcester made that statement?

A. No sir.

Q. Was there anybody present?

A. His nephew, myself and a cochero.

Q. When was it that you heard Mr. Worcester asking his nephew that question?

A. When he was there at Cabanatuan I happened to be there in the place where Mr. Worcester stopped.

Q. When was that?

A. If I am not mistaken it was in August or September.

Q. Cannot you fix the date a little more definitely?

A. I cannot fix the date.

Q. How many times have you heard a conversation or conversations between Mr. Worcester and his nephew, Mr. E. L. Worcester?

A. I do not know how many times I heard them talking together.

Q. How many times did you hear them talking about this hacienda?

199 A. Only on that occasion when he asked that question of his nephew "how is the cultivation going on in our hacienda".

Q. You have stated that on the occasion when Mr. Worcester was at Cabanatuan, some time in August or September, you heard him asking his nephew this question in the presence of a cochero: what is the name of that cochero?

A. Estanislao Bernardo.

Q. And in the presence of this cochero and in your presence Commissioner Dean C. Worcester said to his nephew "how is the cultivation going on in our hacienda"?

A. Yes sir.

Q. In what language did Mr. Worcester speak to his nephew?

A. In English.

Q. State to the Court the exact words that Mr. Dean C. Worcester used on that occasion?

A. "How are the plants on our hacienda", and the answer of his nephew was "They are all right".

Mr. SOUTHWORTH: That is all.

ESTANISLAO BERNARDO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DIOKNO:

Q. State your name?

A. Estanislao Bernardo.

Q. Where do you live?

200 A. At Cabanatuan, Nueva Ecija.

Q. What is your occupation?

A. Cochero owner.

Q. Do you know Commissioner Dean C. Worcester?

A. I do.

Q. Have you seen him at any time in Cabanatuan, Nueva Ecija?

A. Yes sir.

Q. When?

A. In the month of August or September, 1908, if I am not mistaken.

Q. How did you have occasion to see him there?

A. On account of Guillermo Buenaventura speaking to me about hiring my horse for the use of Mr. Dean C. Worcester.

Q. Where did you see Mr. Worcester?

A. In the house of Mr. Walter J. Robb.

Q. Did you hear any conversation between Mr. Worcester and his nephew on that occasion?

A. Yes sir.

Q. State what you heard, if anything, and if it had any reference to the hacienda at Mataz na Cahay?

A. Commissioner Worcester asked his nephew "how are the plants on our hacienda".

Q. And what was the answer of the nephew?

A. He answered "all right".

Q. In what language did they speak?

A. In English.

Q. Do you understand English?

201 A. I understand a little.

Sr. DIOKNO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. What did Mr. Worcester say in English to his nephew?

A. "How are the plants on our hacienda".

Q. He used that exact language, did he, "How are the plants on our hacienda"?

A. Yes sir.

Q. And what did his nephew say?
A. "They are all right".
Q. Now what else did they say?
A. No more, because when he said those words we were about to leave the house.
Q. Did you not hear any other conversation between Mr. Worcester and his nephew except what you have stated?
A. No more, because we were about to leave the house.
Q. Did you hear any other single word other than what you have repeated here?
A. No more, as we were about to leave the house.
Q. Well did not Mr. Worcester talk to you about renting the horse from you?
A. Mr. Dean C. Worcester is the one who talked about hiring my horse.
Q. Did he talk in English to you?
A. He was speaking to Guillermo Buenaventura as well as to me.
Q. Was he talking in English?
A. They were talking in English.
202 Q. State to the Court some things they stated in English there?
A. About hiring the horse?
Q. Yes.
A. As I have stated to you already I understand very little English?
Q. State just one thing. They were holding a conversation in English, now state one thing they said in English in your presence?
A. Look here, Sir, I understand a very little English but I cannot talk it.
Q. Just tell us one thing they said in English in this conversation?
A. Mr. Worcester asked the other man as to how much I would take as hire for the use of my horse.
Q. Is it not a fact that the only thing you know in English is "How are the plants on our hacienda", and the reply "They are all right"; is it not a fact that these are the only English words you know?
A. I understand a little English but I cannot talk it.
Q. Ask him, Mr. Interpreter, in Tagalog, to ask me in English that he wants to hire my horse?
A. (No answer).
Q. You cannot do that, can you?
A. "I want to contract with your horse".
Q. What kind of a contract did you want to make with my horse?

The COURT: There is no use in going further along this
203 line.
Mr SOUTHWORTH: That is all.

ANTONIO HIDALGO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?
A. Antonio Hidalgo.
Q. Where do you live?
A. At No. 149 Calle San José, Trozo.
Q. What is your occupation?
A. Employee.
Q. Will you kindly state to the Court whether or not you have been employed by Sr. José Flameño in the importation of cattle?
A. Yes sir, I was working for him some time.
Q. Will you kindly state to the Court whether or not you had knowledge of an order of the Bureau of Agriculture addressed to Sr. Flameño regarding the importation of cattle from Hongkong to Manila?
A. I have knowledge of several of them, because it was part of my duty.
Q. I will hand you a letter, marked Exhibit D. 14., dated July 11th, 1908, addressed to Sr. José Flemeño from the Bureau of Agriculture, and will ask you to read it?
A. I have read it.
Q. Will you kindly state whether or not at the time Sr. José Flameño received this communication from the Bureau of
204 Agriculture you were in the employ of Sr. Flameño?
A. Yes sir, I was.
Q. Please state whether or not from the time that order was received by Sr. Flameño, he imported any cattle from Hongkong to Manila?
A. No sir, he did not.
Q. Do you know whether or not that order was withdrawn by the Bureau of Agriculture?
A. No sir, officially I do not know, I have not seen any document in regard to that matter.
Q. Do you know any of the other importers of cattle here in Manila?
A. Yes sir, several.
Q. Can you give us their names?
A. Yes sir.
Q. Kindly do so?
A. Gregorio Legara, Eugenio Evangelista, Modesto Alberto and José Flameño, they import from Hongkong.
Q. They were importers of cattle from Hongkong to Manila?
A. Yes sir.
Q. Will you kindly state to the Court whether or not from the time that order was received by Sr. Flameño he has imported any cattle from Hongkong?
A. No sir, and as I understand none of the importers of cattle from Hongkong continued importing cattle from there, although I know of one or two importers of cattle who brought cattle from some port in China, but not from Hongkong.

205 Q. Will you kindly state to the Court whether or not Lack and Davis imported cattle from Hongkong to Manila in October last?

A. Yes sir, I heard that there was some shipment of cattle during that month by Lack and Davis from Hongkong to Manila.

Q. Can you tell the Court the reason why Lack and Davis should import cattle from Hongkong to Manila during that month of October last notwithstanding this order of the Bureau of Agriculture which you have just read?

A. No sir, I do not know the reason how or why Lack and Davis continued importing cattle from Hongkong to Manila, I have no knowledge concerning that.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Don't you know of other men who have imported cattle from Hongkong to Manila since the date of this order to which you have referred?

A. No sir.

Q. Is it not a fact that Alberto Barretto & Company imported cattle from Hongkong here?

A. After that?

Q. Yes.

A. From Hongkong?

Q. Yes.

A. Not that I know of.

Mr. SOUTHWORTH: That is all.

206 RAFAEL ABAD, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. FERRER:

Q. State your name?

A. Rafael Abad.

Q. Where do you live?

A. At Baco, Mindoro.

Q. What is your occupation?

A. Farmer.

Q. Will you kindly state to the Court whether or not you remember having sold some land at Baco?

A. I do.

Q. When did you sell that land?

A. In 1902.

Q. To whom did you sell that land?

A. To an American by the name of Don Esteban.

Q. Under what circumstances did you sell that land?

A. I sold that place because when an American went there and commenced cleaning up and building a house I could not do otherwise than sell to him.

Q. Was there any deed or document drawn up conveying title to that land?

A. When the payment was made I gave a receipt for the money I received, and the American told me when he came to Manila he would have a document made out before a notary.

Q. How did it come that you waited for his return from Manila so that the document of sale should take effect?

207 A. Because he told me he was going to ask something of somebody.

Mr. SOUTHWORTH: We object to any conversation he had with this man.

The COURT: If it is in relation to the sale it is proper. I do not know what it has to do with it yet.

Q. Of whom was he to ask something in Manila?

A. Mr. Worcester.

Q. Do you know Mr. Worcester?

A. Yes sir, I know him.

Q. Do you see him here in the courr room, or not?

A. He is here.

Q. Will you kindly point him out if you know him and see him?

A. There he is (indicating Mr. Dean C. Worcester).

Q. When the deed or escritura was made, in whose name was it put?

A. In the name of Don Esteban, that American I mentioned before.

Q. How much did Don Esteban pay you?

A. The price I asked him was one hundred pesos, but when he paid me he only gave me forty-five pesos.

Sr. FERRER: That is all.

Mr. SOUTHWORTH: No cross-examination.

QUINTIN VILAR, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. FERRER:

Q. State your name?

208 A. Quintin Vilar.

Q. Where do you live?

A. At Baco, Calapan, Province of Mindoro.

Q. What is your occupation?

A. Laborer.

Q. Do you know Mr. Dean C. Worcester?

A. I only know him by sight.

Q. Please state whether or not you ever saw Mr. Worcester in Mindoro?

A. I saw him there in 1903.

Q. Whereabouts did you see him there?

A. I saw him in a place known as New Chicago.

Q. Were you there at the time he went there?

A. I was not there.

Q. Where were you?

A. In my house.

Q. How far is your house from the place you call New Chicago?

A. More or less one hundred brazas.

Q. How do you know that Mr. Worcester was the one who went there on that occasion?

A. Because the presidente came to my house and bought some young coco.

Q. What presidente?

A. The presidente of Calapan.

Q. How did the presidente happen to be there?

A. He was together with Mr. Worcester.

Q. How does it come that you only learned that Mr. Worcester was there on account of the presidente going to your house to buy some young coco?

209 A. Because I asked the presidente who were those Americans there, and he said that Mr. Worcester was there and the Chief of the Forestry Bureau.

Q. Was that the only occasion you saw Mr. Worcester there?

A. I saw him there twice.

Q. Who were his companions the second time?

A. Filipinos, I do not know who they were.

Q. How many days did Mr. Worcester stay there the first time he went to that place called New Chicago, and how many days did he stay there the second time?

A. The first time he came there he arrived about noon, and he went away about five o'clock in the afternoon. I asked the presidente what was the occasion of Mr. Worcester's going there, and he told me that Mr. Worcester had told him he was there for the purpose of inspecting the land. Then I told the presidente that I thaught that land belonged to Mr. Hammill.

Mr. SOUTHWORTH: I object to any conversation between the presidente and this man.

The COURT: It may be leading to something, I don't know, but it is merely a relation if it is anything at all. Proceed.

A. The presidente told me that Mr. Hammill was only a trusted man of Mr. Worcester, and after that the presidente went away.

Q. Will you kindly state to the Court whether or not you ever sold any land in Baco?

A. Yes sir.

Q. When did you sell this land?

210 A. In May of last year.

Q. To whom did you sell this land?

A. Mr. Hammill came to my house to make a bargain about my land, and he told me that some Americans had asked him to buy the land for them. I told him he could have the land for two hundred pesos, but we did not come to an understanding that day. Then three days after that he came again and offered me one hundred and forty pesos, and I agreed to let him have the land for one hundred and forty pesos. Then he wanted to give me thirty or forty pesos first, but I did not like to accept it. He said "Please take this

money now and when the mail arrives I will complete the payment," and I replied "When the mail arrives with all the money then you can pay me, but not now as I do not want partial payments." Then when the mail arrived he came to me and said that the mail had brought him no money. Then in August he came to me and told me he had the money and he invited me to go with him to Calapan for the purpose of paying me, and I told him I could not go to Calapan because I had some work to do. Then he told me that we could do that on Sunday, and on Saturday afternoon he went to Calapan and the following day, Sunday, I also went to Calapan, and upon our arrival at the notary's office he counted out one hundred and forty pesos. Then the notary said that he could not draw the document on that day because there was no office. Then I told the notary that I could not come on Monday——

The COURT: What has this to do with this case, if you can-
211 not confine yourself to something material the witness will be withdrawn.

Q. Where did that money come from which Mr. Hammill paid you?
A. I met him only at the notary's office.
Q. Don't you remember what excuses he made to you after the price was agreed upon between you, that he had to wait for a steamer, or what?

Mr. SOUTHWORTH: Objected to as immaterial and incompetent.
The COURT: Objection sustained.
Sr. FERRER: Exception.

Q. Do you know where that money came from?
A. I do not know where it came from.

Sr. FERRER: That is all.
Mr. SOUTHWORTH: No cross-examination.

AMBROSIO ALBAN, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. FERRER:

Q. State your name?
A. Ambrosio Alban.
Q. Where do you live?
A. At Baco, Mindoro.
Q. What is your occupation?
A. Laborer.
Q. Do you know Mr. Dean C. Worcester?
A. I do.
Q. How do you happen to know him?
212 A. Because I was with him some time.
Q. When?
A. In the year 1903.
Q. Where?

A. In the barrio of Baco.

Q. How did you happen to be with him in the barrio of Baco on that occasion?

A. Because the presidente ordered me to go with him.

Q. Where did you go?

A. To a place known as New Chicago.

Q. Why did you go there?

A. To inspect the land there.

Q. Who went there, the presidente or Mr. Worcester?

A. Mr. Worcester, the presidente and myself.

Q. What did Mr. Worcester do after he arrived there?

A. After we arrived there we went upstairs into a house, I believe the house of Mr. Hammill, and after we came downstairs and Mr. Worcester inspected the place where Mr. Hammill was staying. Then Mr. Worcester started to ask who were the owners of the adjoining boundaries and I told him Cabeza Magill.

Q. Were any more questions asked of you?

A. And I told him another boundary was land of Captain Quintin, and another was my land. Then Mr. Worcester asked me if I would like to sell him that land.

Q. And what was your reply?

A. I told him I could not sell it.

213 Q. What is the area of that land which Mr. Worcester inspected and walked over?

A. If you were to plant rice or palay it would take about five cavanes of seed.

Q. And that where did Mr. Worcester go?

A. He went again to the house, and upon arriving at the house he measured from the place where we came to the house how many footsteps.

Q. And after that?

A. We went away down the river again.

Q. Will you kindly state to the Court whether or not you sold any land there?

A. Yes sir.

Q. When?

A. In the year 1904.

Q. To whom?

A. I sold the land to Mr. Hammill.

Q. What did Mr. Hammill tell you when he bought that land from you?

Mr. SOUTHWORTH: We object to that, as to what Mr. Hammill said to him.

The COURT: You must confine yourself to material questions, Sr. Ferrer.

Q. That land that Mr. Hammill bought from you, for whom was he buying?

A. He told me that Mr. Worcester told him to buy it for him, because it was a good place for planting hemp.

Q. Did you sell that land?

A. Yes, I sold it.

Q. What is the area of the land now owned or controlled
214 by Mr. Hammill?

A. More or less it would take one hundred cavanes of seed to plant.

Q. Will you kindly state to the Court whether or not anything particular happened to you when that land which is now under the control of Mr. Hammill was measured?

A. When the land was being measured by the land surveyor he was encroaching on my land and I prohibited the land surveyor from doing so, and then Mr. Hammill said to me: "You had better not interfere with the land surveyor as Mr. Worcester has plenty of money and will send you to Bilibid if you don't look out."

Q. Will you kindly state to the Court whether or not you lived on that land of Mr. Hammill?

A. I stayed there for a month, as Mr. Hammill told me to stay there.

Q. So you know the way Mr. Hammill is living there, his circumstances?

A. Yes sir.

Q. Would you affirm from the manner in which Mr. Hammill is living that he would be likely to have such a large quantity of land as his own?

Mr. SOUTHWORTH: Objected to as calling for an opinion of the witness as to what he thinks.

The COURT: Objection sustained.

Sr. FERRER: Exception.

Q. When Mr. Hammill went to New Chicago, what was his business?

A. He had no occupation at all.

Q. He did not have any business there?

215 A. No sir.

Q. Had he no way of earning his living?

A. No sir.

Q. Who was on that land before he arrived there?

A. Nobody.

Q. When Don Esteban went there, who stayed there?

A. Don Esteban.

Q. What means of living did Don Esteban have?

A. As far as I know none.

Q. What did he do there?

A. He only stayed there.

Q. When Don Esteban went there, who stayed there?

A. Husband and wife, Americans.

Q. What are their names?

A. I do not know.

Q. What were they doing there?

A. As husband and wife nothing, they stopped there in the house, that is all.

Q. After those two Americans, husband and wife, who went there?
A. Nobody, Mr. Hammill came then.
Q. Is Mr. Hammill still there to the present time?
A. He is not there now.
Q. Who is there now?
A. An American.
Q. What is his name?
A. I do not know.
Q. Have you had any dealings whatsoever with the American who is there now?
A. No sir.
216 Q. Do you know what that American is doing there now?
A. No sir.
Q. In which way do you know that American there now: is he the owner of the place or is he the man in charge of the place?
A. He seems to be there only to take care of it.
Q. When Mr. Hammill went away from there do you know whether or not he sold that land to the American who is there now?
A. I do not know.

Sr. FERRER: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. You state that Mr. Worcester was at this place, Mr. Hammill's house, in 1903?
A. Yes sir.
Q. What day of the year was it?
A. I do not remember the month.
Q. Was it the first or the last of the year?
A. I cannot tell you whether it was the beginning or end of the year.
Q. How do you know it was in 1903?
A. Because that is all I remember, that it was 1903.
Q. Who was with Mr. Worcester?
A. I do not know, there were two Americans, Mr. Worcester and another American. I mean to say that when they came to that place there were only two.
Q. Who were the two?
A. Mr. Worcester.
Q. Who else?
217 A. I do not know the name of the other American.
Q. But he was an American?
A. Yes sir.
Q. Was he present when Mr. Worcester measured this land?
A. No sir.
Q. Where was he?
A. I do not know.
Q. Was that the same trip on which the presidente of Calapan went with you?
A. Yes sir.

Q. Was the presidente of Calapan there?
A. Yes sir.
Q. Do you know what kind of an American this was who was with Mr. Worcester at that time; could you describe the man?
A. I do not know him and I can't tell you who he was.
Q. On what side of the river is this land located about which you have spoken?
A. At the mouth of the river coming from Uaua to Baco.
Q. Is the land on the same side of the river as the house of Mr. Hammill?
A. Yes sir.
Q. When Mr. Worcester spoke to you in relation to buying your land, who was present?
A. The wife of Mr. Hammill.
Q. Was she an American woman or a Filipino woman?
A. A Tagalog.
Q. Now how was this land measured by Mr. Worcester?
A. He was with the land surveyor.
218 Q. Did he have a land surveyor with him?
A. Yes sir.
Q. Well how did the land surveyor measure the land?
A. He measured it with a steel tape measure with numbers on it. I don't know what you call it.
Q. Was the land surveyor an American?
A. Yes sir, he was an American.
Q. Where did you and Mr. Worcester and the presidente meet with the land surveyor?
A. We have not seen him.
Q. Did you not say that you saw the land surveyor on that occasion?
A. Yes, I saw the land surveyor.
Q. Where was he when you first saw him?
A. In the house of Mr. Hammill.
Q. You found him at the house of Mr. Hammill when you and Mr. Worcester and the presidente got there, did you?
A. We did not meet anybody in the house.
Q. Where did you meet the land surveyor first?
A. In the house of Mr. Hammill.
Q. Did you not just state that you did not meet anybody in the house of Mr. Hammill?
A. I mean to say that when I went in company with Mr. Worcester and the presidente we did not meet anybody in the house of Mr. Hammill.
Q. Where was the land surveyor at the time you went in company with Mr. Worcester and the presidente to the house of Mr. Hammill?
A. I cannot tell you where he was.
219 Q. Well you saw him at the time you and Mr. Worcester and the presidente went to Mr. Hammill's house, did you not?
A. No sir.

Q. Well was not the land surveyor at Mr. Hammill's house on Mr. Hammill's land during the time that you and the presidente and Mr. Worcester went there?

A. No sir.

Q. If the land surveyor was not at Mr. Hammill's house or on the land on the occasion when you and Mr. Worcester and the presidente were there, why did you say that Mr. Worcester had a surveyor measure that land there at that time?

Sr. FERRER: Objected to, because the witness has not so testified.

The COURT: Yes, he has answered the question but we have no time to repeat questions which are entirely immaterial.

A. When the land was measured Mr. Worcester was not there.

Q. Now when Mr. Worcester talked with you about buying your land, in what language did he talk?

A. Mr. Worcester and the presidente were talking.

Q. What is the name of the presidente?

A. Luciano.

Q. What is his other name?

A. Lopez.

Q. Then Mr. Worcester talked to the presidente and the presidente talked to you?

A. Yes sir.

220 Q. Where was Mr. Worcester at the time the presidente was talking to you?

A. We three were together.

Q. Did the presidente interpret for Mr. Worcester?

A. Yes sir.

Q. In what language did the presidente talk to you?

A. In Tagalog.

Q. In what language did Mr. Worcester talk to the presidente?

A. Another American was speaking in Spanish together with Mr. Worcester, and he spoke in Spanish to the presidente.

Q. Mr. Worcester was talking to another American, and then that American was talking to the presidente in Spanish and the presidente was talking to you in Tagalog, was he?

A. Yes sir.

Q. Why did not Mr. Worcester speak to the presidente; could not Mr. Worcester talk Spanish?

A. I do not know why they did not talk Spanish.

Q. Who was this American that was there?

A. I do not know his name.

Q. Is this the same American which you say went up there with you and Mr. Worcester and the presidente?

A. That was another American.

Q. What became of the American that went up there with you then?

Sr. FERRER: Objected to as immaterial.

The COURT: Objection sustained, it is wholly immaterial.

221 Q. Were the two Americans with you on that occasion besides Mr. Worcester?

A. No sir.
Q. You say you went up there with one American, did you not?
A. Two Americans.
Q. Mr. Worcester and another American?
A. Yes sir.
Q. Then you were talking with Mr. Worcester and the presidente and another American, were you?
A. Yes sir.
Q. Where did this American come from that you were talking to with Mr. Worcester and the presidente?
A. They were together.
Q. Did you find him there at Mr. Hammill's house?
A. We were together, we came from Uaua.
Q. Did you not say that this American with whom you were holding the conversation with Mr. Worcester and the presidente was another American, and not the American who went up there with you?
A. I mean to say that Mr. Worcester, another American, the presidente and myself went there; that is all I mean.
Q. What time did Mr. Worcester go to Baco that day?
A. In the morning.
Q. What time did he go to Mr. Hammill's house?
A. At noon.
Q. How long did he stay at Mr. Hammill's house?
A. I cannot tell you just how many hours he was there.
Q. Approximately how long?
A. He arrived there at noon and in the afternoon he went
222 away.
Q. What time did he leave Baco that morning?
A. In the morning as I have stated.
Q. About what time?
A. I cannot tell you, the sun was low yet, not very high.
Q. Was it about eight o'clock when you left there?
A. I cannot tell you.

Mr. SOUTHWORTH: That is all.

Redirect examination by Mr. FERRER:

Q. On that day that you went to New Chicago together with Mr. Worcester and the presidente and another American, was the land measured on that same day?
A. No sir.
Q. When was that land measured, what year?
A. Last year only was the land measured.
Q. When the land was measured, was Mr. Worcester there, or not?
A. He was not there.
Q. On that occasion when Mr. Worcester was there together with the other American and the presidente to inspect and walk over that land, was the wife of Mr. Hammill present or not when Mr. Worcester was trying to buy from you your land?
A. No sir.

Q. When was the wife of Mr. Hammill present?
A. When the payment was made.
Q. Who was to pay you the money?
A. Mr. Hammill.

Sr. FERRER: That is all.

223 JOSE FLAMEÑO, recalled in behalf of the defendant, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. Will you kindly state to the Court whether or not from the date upon which you received this communication, Exhibit D. 14, from the Bureau of Agriculture, dated July 11th, 1908, you received any further order revoking this one?
A. No sir, I did not receive anything.
Q. You did not receive another communication from the Bureau of Agriculture?
A. No sir.
Q. From the date of receiving this order, Exhibit D. 14, until October 31st, 1908, did you have occasion to import cattle from Hongkong to Manila?
A. No sir.
Q. Were you not one of the importers of cattle from Hongkong to Manila?
A. Yes sir.
Q. Then why did you not continue importing cattle from Hongkong to Manila during the month of October, if you were one of the importers?
A. On account of that letter, Exhibit D. 14., which I received from the Bureau of Agriculture which prohibited the importation of cattle from Hongkong to Manila.
Q. Will you kindly state to the Court whether or not Lack and Davis imported cattle from Hongkong to Manila in the month of October last?
A. I know they imported cattle in the month of October.
224 Q. From Hongkong?
A. Yes sir, from Hongkong.

Sr. AGONCILLO: That is all.
Mr. SOUTHWORTH: No cross-examination.

WILLIAM H. GRANT, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DIOKNO:

Q. State your name?
A. William H. Grant.
Q. Where do you live?
A. Manila.
Q. What is your business?
A. Examiner, Bureau of Posts.

Q. I will hand you a telegram and will ask you to state where it came from?

A. This is a telegram which was filed with our receiving clerk at the Manila Telegraph Office.

Q. When?

A. On October 24th, 1908.

Q. Has that telegram been transmitted?

A. Yes sir.

Q. When?

A. The same date at 2.11 p. m.

Sr. DIOKNO: I will ask permission of the Court to read this telegram into the record.

The COURT: You may do so.

225 Sr. DIOKNO: It is as follows:

"Philippines Constabulary.

Telegraph Division.

MANILA, *October 24th*, 1908.

William Buenaventura, Cabanatuan, via San Isidro.

Three carabaos shipped to Evarts Worcester.

WORCESTER."

z/b/

The COURT: Anything further with this witness, Sr. Diokno?

Sr. DIOKNO: That is all.

Mr. SOUTHWORTH: No cross examination.

EMIGDIO OCTAVIANO, called in behalf of the defendant being duly sworn, testified as follows:

(The testimony of this witness was given in Ilocano and interpreted by Sr. Narciso Rangel into Spanish, and from Spanish into English by the court interpreter, Sr. Rangel being duly sworn.)

Direct examination by Sr. SALAS:

Q. State your name?

A. Emigdio Octaviano.

Q. Where do you live?

A. At Naguilan, Benguet Province.

Q. What is your occupation?

A. Proprietor.

Q. Do you know Commissioner Dean C. Worcester?

A. Yes sir.

226 Q. Since when have you known him?

A. From the time of his trip there as an official of the government I knew him, as I was employed by him.

Q. Besides the official relations you had with him, did you have any other business transaction with him?

A. Yes sir.
Q. What kind of relations?
A. On account of my friendship with him, and because he invited me many times to interpret for him.
Q. Do you — whether or not Mr. Worcester owns any property at Benguet.
A. I know.
Q. What place?
A. In Loakan since he had the animals there.
Q. Do you personally know the land in question?
A. Yes sir.
Q. How do you know that land belongs to Commissioner Worcester?
A. I know because I heard of it very often from people, and because he used to go there often to visit that land.
Q. Have you any other reason for believing that Mr. Worcester owns this land?
A. And because when we went to a fiesta he asked me about that land.
Q. In which way did he ask you?
A. He said: "Octaviano, what do you think of my animals and my land there?"
Q. And what was your answer?
A. I told him they were all right.
227 Q. You have stated that you acted as interpreter for Mr. Worcester?
A. Yes, sir.
Q. On what occasion did you act as an interpreter for him?
A. When he invited me to go with him to take photographs of the Igorotes, men and women, both naked.
Q. Thoroughly naked?
A. Some times half naked and some times entirely naked.
Q. On how many occasions was that?
A. Half naked once, and entirely naked twice.
Q. Did these Igorotes permit their photographs to be taken that way voluntarily?

Mr. SOUTHWORTH: Objected to as immaterial, as to whether they objected or not.
The COURT: What is the object of this question, Sr. Salas?
Sr. SALAS: To show justification of the libel, and to ascertain whether or not this was one of the means by which the Igorotes were civilized?
The COURT: This is entirely valueless for that object.
Sr. SALAS: Exception.

Q. Did Mr. Worcester tell you what his object was in taking these photographs?
A. No sir.
Q. Do you know an American by the name of Clarke?
A. Yes sir.
Q. Have you seen him in Benguet at any time?

A. Not only once but several times.
Q. Was he alone or accompanied?
A. I saw him only once when he was alone.
228 Q. The time he went there accompanied, who went with him?

Mr. SOUTHWORTH: Objected to on the ground it assumes that the witness said he saw him accompanied by anyone, it is an attempt to lead the witness.
Sr. SALAS: It is the basis for another question.
The COURT: Objection sustained.
Sr. SALAS: Exception.

Q. Have you also seen whether or not he was accompanied by other persons?
A. I remember one time that we went to a place called Lubas, on which occasion Commissioner Worcester was also with us, if I am not mistaken.
Q. Besides you, Mr. Worcester and Mr. Clarke, was there any other person who went with you?
A. There were some Igorotes, Sioco and his father Mateo and his son-in-law, and others.
Q. How many times did you go in that way
A. Only once.
Q. To what place did you go in Benguet?
A. To the land in question called Lubas.
Q. What was the purpose of that excursion, if you know?
A. It was on account that that land belonged to Mateo Carantes, and it seemed to be that the government objected to it, and Mr. Clarke also seemed to be interested in that land, because he was compromising with Mateo Carantes to buy it.
Q. Did you know whether or not Mr. Worcester was interested in that land?
A. No sir.
229 Q. You have stated that Mr. Worcester took photographs of naked Igorotes; was that because they were already naked?

Mr. SOUTHWORTH: I object to that.
The COURT: Objection sustained.
Sr. SALAS: Exception.
The COURT: Anything further with this witness, Sr. Salas?
Sr. SALAS: No, sir; that is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Where is that land situated that you state that Mr. Worcester told you he had an interest in?
A. It is situated in a place known as Loakan, adjoining the military reservation.
Q. Do you know where the present southern boundary of the Baguio town site is, the boundary near Loakan?
A. I do not know.

Q. Do you know whether Loakan is included in the Baguio town site or not?

A. Part of it I know is comprehended in the town site, even the houses of Igorotes, but that I only know by hearsay.

Q. Do you know whether or not Mr. Worcester ever bought that land from anybody?

A. I do not know.

Q. Do you know what it is necessary for a party to do in order to acquire title to that land?

A. Yes sir.

230 Q. It is necessary for a party to register his claim within six months from the time at which the reservation is declared, is it not?

A. I do not understand you very well.

Q. Do you know whether or not Mr. Worcester ever registered any claim within six months from the time the reservation was declared, or at any time?

A. I suspect so.

Q. You just suppose that Mr. Worcester has an interest in that land?

A. I suspect it only, because when I am absent I cannot tell whether that land was registered or not.

Q. You just suspect that because Mr. Worcester on a certain occasion visited that land, is that not so?

A. Yes sir.

Q. Now you do not know whether Mr. Worcester visited that land officially or in his private capacity, do you?

A. I do not know whether it was officially only, or as a private man, but he had there some animals.

Q. Do you state that these animals belonged to Commissioner Dean C. Worcester?

A. Yes, sir because I was told so on that occasion.

Q. How do you know that these animals belonged to Commissioner Dean C. Worcester?

A. I only know that they belonged to Mr. Worcester because Mr. Worcester told me so, and that the one who took care of them was his nephew.

Q. You suppose they belong to Commissioner Dean C. Worcester because they were taken care of by his nephew, do you not?

A. Yes sir.

—. ——.

231 A. Yes, I don't know whether they belong to both of them, they might belong to the commissioner and his nephew, because I bought two head of cattle from him.

Q. Do you know whether — not persons in Benguet declare ownership of their personal property?

A. I know if it is over two hundred pesos.

Q. Well how many cattle were on that place you speak of as belonging to Mr. Dean C. Worcester?

A. There were plenty of them, but I do not know whether the

cattle of Mr. Worcester are together with the cattle of his nephew, or not.

Q. Were there more than two hundred pesos worth of cattle there?

A. A good deal over that.

Q. Will you state to the Court whether or not you know that Mr. Dean C. Worcester has ever made a declaration of ownership of any personal property in Benguet?

A. I do not know.

Mr. SOUTHWORTH: That is all.

The hearing was then adjourned until the following morning at eight o'clock a. m.

JANUARY 13TH, 1909

Pursuant to adjournment the case was called this a. m., with the following appearances: Mr. Southworth in behalf of the government; Srs. Agoncillo, Salas and Diokno on the part of the defendant, T. M. Kalaw.

232 ENRIQUE ALTAVAS, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. Enrique Altavas.

Q. Where do you live?

A. Manila.

Q. What is your occupation?

A. Assistant Clerk of the Court of Land Registration.

Q. Will you kindly state to the Court if you have brought along with you the documents which were requested by the subpœna duces tecum served upon you?

A. Yes sir, the document relating to the military reservation at Baguio, Camp John Hay.

Q. I will hand you a document, marked for identification Exhibit D. 19., and will ask you to state whether or not it is an exact copy of the original which is on file in your office?

A. Yes sir, this is a copy certified to by the Clerk of the Court of Land Registration.

Q. Is this an exact copy of the original?

A. Yes sir.

Sr. AGONCILLO: I offer in evidence this copy which has been identified by the witness as Exhibit D. 19.

Mr. SOUTHWORTH: I object to the introduction of this on the ground that the witness has not qualified himself to testify as to this document, and because the document itself is immaterial and irrelevant, and I do not understand what the object is in introducing it.

233 Questions by the COURT:

Q. What is your official position?

A. Assistant Clerk of the Court of Land Registration.

Q. As such assistant clerk do you have charge of the records of the Clerk's Office in that Court?

A. Yes sir.

Q. And as such assistant clerk do judgments and other orders and papers made in that court come into your custody?

A. Yes sir.

Q. What is this document you have presented here, Exhibit D. 14?

A. This is the case of the military reservation at Baguio, Camp John Hay.

Q. A case in that court?

A. Yes sir.

The COURT: The original may be received, and the certified copy substituted.

Mr. SOUTHWORTH: And as to the relevancy and materiality of the document?

The COURT: I don't know anything about that as yet, it may develop into something.

Mr. SOUTHWORTH: I ask that counsel for the defense state what they expect to prove by this document, it does not seem to me to have any connection with any issue in this case.

The COURT: I don't know that it has, it seems to be a statement that some order was made in which there is a line known as the boundary of Mr. Worcester's hacienda, that is all that ap-
234 pears to have any relation to it. It may be received for the present, but it will be left out of consideration entirely unless shown to have some connection with the issues in this case.

Sr. AGONCILLO: That is all.

Mr. SOUTHWORTH: No cross examination.

L. ELZINGRE DUMAS, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. L. Elzingre Dumas.

Q. Where do you live?

A. At No. 171 San Sebastian.

Q. What is your occupation?

A. Merchant.

Q. Will you kindly state to the Court whether or not you are the representative of the firm of Barretto & Company of this city?

A. I am.

Q. Since when are you such representative?

A. From the year 1899.

Q. Will you kindly state to the Court whether or not the firm of Barretto and Company handle the business of the importation of cattle?

A. Yes sir, they do.

Q. Do they import cattle from Hongkong to Manila?
235 A. That is according to the seasons.
Q. As representative of the firm of Barretto and Company have you had an opportunity of knowing as to whether an order was issued by the Bureau of Agriculture prohibiting the importation of cattle into Manila from Hongkong?
A. What order do you refer to?
Q. I will hand you a letter marked Exhibit D. 14., and will ask you to read it?
A. Yes, I know of this order.
Q. Is it not true that this order prohibited the importation of cattle from Hongkong to Manila?
A. That order does not prohibit the importation of cattle, but it does prohibit the shipment of infected cattle.
Q. From where?
A. From Hongkong.
Q. Will you kindly state to the Court whether or not this order which has just been shown you has been revoked by a subsequent order?
A. This letter, or order as you call it, is not prohibition of the importation of cattle from Hongkong, it does not prohibit at all the importation, but it does prohibit the landing of infected cattle, according to General Order No. 10.
Q. Do you understand English?
A. Yes sir.
Q. Will you kindly read the contents of this letter Exhibit D. 14.?
236 A. Here it says: "Landing permits will not be issued in the future for infected shipments of cattle from Hongkong except for such cattle as may have left that port prior to the receipt of the notice provided for in Section Three of Rule II, General Order No. 10.," but it does not prohibit at all the importation of cattle from Hongkong, what it prohibits is the importation of infected cattle from Hongkong.
Q. Do you believe that cattle could be imported from any foreign country, cattle which were not infected, in accordance with that order?
A. Whenever they are not infected, yes.
Q. How is it that in that order they make a special exception of the port of Hongkong?
A. Because as a general rule imported cattle that come infected come from Hongkong.
Q. And for that reason that order was issued by the Bureau of Agriculture?
A. Yes sir.
Q. Will you kindly state to the Court whether or not from the date of the order issued by the Bureau of Agriculture to the firm of Barretto & Company, represented by you, you imported cattle from Hongkong to Manila, until October 31st, 1908?
A. No sir.
Q. Why not?

A. Because as a general rule the cattle of Hongkong were infected.

Q. Will you kindly state to the Court whether or not the
237 firm of Barretto & Company received an order or letter from the Bureau of Agriculture revoking that order?

A. The firm of Barretto & Company received no order revoking this order; but this is not an order from the Bureau of Agriculture, it is merely a letter from the Bureau of Agriculture in relation to General Order No. 10.

Q. But it is a letter which came from the Bureau of Agriculture?

A. Oh yes.

Q. An official letter, of course?

A. Yes.

Q. Please state to the Court if you know of any importers of cattle who have imported cattle from Hongkong to Manila in the month of October last?

A. I remember that there was an importation of cattle from Hongkong about the end of October.

Q. Will you kindly state to the Court the name of that importer?

A. Yes sir. Lack and Davis.

Q. Will you kindly state to the Court whether or not these cattle of Lack and Davis were slaughtered in the Bay of Manila?

A. I have not seen them slaughtered, but the newspapers talked about it.

Q. Besides Lack and Davis do you know of any other importers of cattle having imported cattle from Hongkong to Manila from
238 the date of this letter of the Bureau of Agriculture until October 31st, 1908?

A. I do not remember of any.

Sr. AGONCILLO: That is all.

Mr. SOUTHWORTH: No cross examination.

THOMAS CARY WELCH, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. Thomas Cary Welch.

Q. Where do you live?

A. Buffalo, New York, is my home, at present I am residing in Manila.

Q. What is your official position, if any?

A. Chief of the Law Division of the Executive Bureau.

Q. Will you kindly state to the Court whether or not you have brought with you the document which you were requested to bring in accordance with the subpœna duces tecum served on you?

A. My subpœna refers to all papers referring to the protest of Flameño and others regarding the importation of cattle from Hongkong. Now including the protest itself there are a number of papers on that subject on file in the Executive Bureau, and I have brought them all, including the protest dated November 4th, 1908, and signed

by José Flameño and others, which I presume is the one you want.

239 Q. Is this the document presented to the Governor General, the petition signed by José Flameño, Modesto Alberto, Pedro Picornell, and by Aldecoa & Company in liquidation signed by their representative?

A. Yes sir, addressed to the Governor General and signed by these names you have mentioned.

Q. Will you kindly state to the Court if General Order No. 10 of the Bureau of Agriculture, dated June 5th, 1908, is the one which accompanied this petition filed by Sr. José Flameño and others, which you have mentioned?

A. That is included in the same wrapper, yes sir.

Sr. AGONCILLO: I offer in evidence this petition and general order No. 10, which has been testified to by the witness, and also the endorsements connected therewith, and will ask to have certified copies made and substituted later.

The COURT: Certified copies will be received in lieu of the originals, and will be marked Exhibits D. 20., and D. 21., which will include the petition, endorsements, and General Order No. 10.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Have you Mr. Worcester's endorsement on these?

A. I think you will find his endorsement on the wrapper.

Mr. SOUTHWORTH: That is all.

240 PEDRO PICORNELL, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?

A. Pedro Picornell.

Q. Where do you live?

A. At No. 133 Calle Real, Intramuros.

Q. What is your occupation?

A. Barber shop.

Q. Will you kindly read this petition signed by you, Exhibit D. 20.?

A. I have read it.

Q. Is this the same petition which was presented to the Governor General?

A. Yes sir.

Q. Please look at this General Order No. 10, Exhibit D. 21.?

A. I know this order.

Q. Is this the order which accompanied your petition which you presented to the Governor General?

A. Yes sir.

Sr. AGONCILLO: That is all.

Mr. SOUTHWORTH: No cross-examination.

MANUEL RAVAGO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?

241 A. Manuel Ravago.

Q. Where do you live?

A. At No. 39 Calle Real, Santa Ana.

Q. What is your occupation?

A. Journalist and Corrector of Style in the Assembly.

Q. What knowledge have you got of the Spanish language as an expert?

A. The knowledge acquired through constant study during more than twenty years of the principal authors of Spanish literature.

Q. How long have you been studying Spanish?

A. From my childhood.

Q. Have you been studying Spanish literature?

A. Yes sir, in the faculty of philosophy and letters I had occasion to study that literature, according to the plan adopted in the University of Manila.

Q. I will show you an article which has been offered in evidence by the prosecution, marked Exhibit A., and entitled "Aves de Rapiña", and will ask you to kindly state whether or not you have read this article, and if not to read it now?

A. It is a long time since I have read it, and at this moment I cannot remember very well its contents. I will therefore ask permission of the Court to read it again?

The COURT: Proceed.

Q. (After reading the article). From the whole text of the article do you believe that it could necessarily refer to one

242 person?

Mr. SOUTHWORTH: I object to the question, the article is before the Court, and that is a question of law.

The COURT: We had that question up already upon your presenting one of these cases, and upon your insistance I allowed that opinion to be expressed, although I believe myself it is incompetent. The witness may testify, he says he is a professor of the science of literature and can testify as to what he knows on the subject.

A. To answer that question would be a lengthy digression, and I do not know whether I am authorized by the Court to answer at length.

The COURT: Answer the question as you see fit.

A. According to my knowledge, belief and understanding the tendency of this article is to express an idea which has always been followed by "El Renacimiento" in its columns, the idea of protesting against all sorts of tyranny, against oppression of any kind whether of nation over nation, town over town or society over society. When I first read this article I sincerely confess that my impression was that the author of it was trying once again to voice his protest

against such tyranny and oppression without any intention of indicating any particular person or entity, but taken as a whole to protest against all those who were oppressors of liberty. Furthermore it seems to me that under the symbol of the lion, the
243 eagle and the serpent, which is mentioned here, it is meant to signify the collective tyranny of nations over nations, towns over towns, and society over society. It is known that the several nations adopt certain symbols to signify their power; the lion has been adopted by the Belgian nation and the Spanish nation, the eagle by the Austrian, American and French, not to mention the Mexican Republic and some others. What struck me with some curiosity, however, was the allusion to the serpent, because in international heraldry, as we may call it, I do not remember of any nation which has adopted the serpent as the distinctive feature on their coat of arms, unless possibly where on the Mexican shield the serpent is shown writhing in the talons of — flying eagle. Taking the text of the article altogether it seems to me that it reflects the same spirit of protest against all collective tyranny which it has ever been the aim of "El Renacimiento" to inveigh against in its columns. Nevertheless on reading the article again it seems to me that there is a tendency to particularize, especially where it alludes to ascending the mountains of Benguet to measure the craniums of the Igorot and to spy out deposits of gold which might be hidden in the mountains, and I tried to make myself understand against whom such a protest might be addressed, but it never occurred to me, not even as a dream, to imagine that it might have reference to Commissioner Dean C. Worcester. What I was convinced was that
244 the reference was to the cloud of exploiters, of which the papers often speak, who are imperilling the future of this country, and this is a matter which has always had the warm sympathy of "El Renacimiento" with those who protest against it, and on many occasions this paper has opposed the perpetual franchises which are being granted to railroad companies, believing that such concessions were in the nature of mortgaging the country, mortgaging the future of the people. I repeat that when I read this article it was my impression that it was once more denouncing the policy which allowed of the exploitation of our wealth by companies or societies or entities that came from abroad, sometimes under the pretext of scientific investigation, and which were literally consuming the substance of the people in appropriating the national wealth. What confirms me in this opinion is the biblical citation which is quoted by "El Renacimiento" at the end of the article, "Mane, Tecel, Phares," alluding to the inscription which appeared on the wall of the banquet hall of Babylon when King Baltazar was feasting with his courtiers and the ladies of his court, and profaning the holy vessels which had been brought from the temple of Jerusalem by one of his predecessors, and which inscription the prophet Daniel on being commanded by the King interpreted to mean that the days of King Baltazar were counted, that the measure of his iniquities was overflowing, desiring to show by this that Justice was
245 claiming its due from Heaven. It seems to me that in making this quotation the intention was to apply the same idea to

these entities who were trying to enslave others, and to indicate that the Justice of God never sleeps but would in good time mete out the proper punishment to all offenders, and that at a time when least expected, as when King Baltazar was interrupted in the middle of his fasting in the banquet hall of his palace in Babylon by the tracing of that strange inscription on the wall by an unseen hand, and which foretold his doom.

Q. So then according to you the article might refer to entities and it might also refer to persons?

A. I have stated, if I am not mistaken, that there was a moment when I thought the article might have reference to an individual but that I put that idea aside when I saw that the plural form was used in the articles, and I then became impressed with the idea that the object of the writer was to anathematize society collectively and all organizations which were trying to enslave other organizations.

Q. Now taking the paragraph which says "There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire"; what do you consider is meant by that proposition?

A. I do not quite understand the question.

Q. I mean taking the grammatical construction and the philosophy expressed: is this a universal proposition or a particular proposition which is determinate in its character?

246 A. As the plural is used in saying "men" I am almost sure that it is a proposition of a general character. You must know, Mr. Attorney, that in philosophy there are universal distinctive propositions and general propositions and particular propositions, and without trying to impose my judgment at all I would classify this proposition among general propositions.

Q. Now from this standpoint and on the hypothesis that a certain person has executed some of the acts mentioned in the following paragraph, would this interpretation of yours exclude the interpretation that some of the other ideas or facts might refer to other persons?

A. I do not quite understand you.

Q. Taking the hypothesis that a certain person has performed some of the acts which are related in this paragraph, would that exclude from consideration the other facts which might have been performed by some other persons?

A. Do you mean that from the general interpretation which I have given to the preceding paragraph, whether or not it excludes the interpretation that the following paragraph might refer to a particular person, is that the meaning of your question, Mr. Attorney?

Q. No sir, the following paragraph refers to many facts and I ask whether or not on the hypothesis that it is proven that a certain person had done such acts, would this exclude the in-

247 terpretation that the balance of the paragraphs of the article might refer to another person or persons?

A. It seems to me it would not

Q. Will you kindly state to the Court on what you base that opinion of yours?

A. It seems to me that this article refers to collectivities, and therefore the following paragraphs may continue to refer to the same collectivities of which I have spoken from the beginning, and even the affirmation made in the title would not exclude that it might also relate to some particular, that is to say there might be tyrannical collectivities and there might be tyrannical entities, and from the joining of these would be formed a collectivity which is censured on account of their tyranny. I do not know whether I have understood the sense of the question presented by the attorney, or not.

Q. For instance in the paragraph which follows that about which you have given an interpretation, and which says "Ascending the mountains of Benguet to classify and measure the skulls of the igorot and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold. The prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit". Here as you see, Sr. Ravago, there are many facts stated in this paragraph, and in the following paragraphs there are, also several facts stated. Now I ask
248 of you to state, on the hypothesis that there are two facts in one paragraph and three in another, could it be proven that they applied to different persons, or would it exclude the fact that the balance might be applicable to one or more persons?

Mr. SOUTHWORTH: I object to the question on the ground that the witness has testified that this article did not refer to any individual but to nations, pueblos and people collectively.

The COURT: And now he is asked a hypothetical question and he may answer.

A. No sir.

Q. Then the deduction would seem to be from the explanation given by you, that this is an article in which the allegorical or symbolical idea predominates?

A. Yes sir.

Q. Now in view of your technical knowledge in the study of literature, have such symbolical or allegorical expressions a necessary relation with determined persons, entities or things?

A. No sir.

Q. Will you kindly state to the Court on what you base that opinion?

A. The eagle for instance has no exact relation with a society, town or people, but it is a symbol, what we call in philosophy a sign representing a certain potentiality and containing a certain suggestion, as for instance the ring of marriage is a symbol of the marriage contract without being the marriage itself, and it
249 comes to be an allegory of the marriage, a remembrance of some marriage, just as the eagle is a symbol of some nation or some family, a sign on their shield, but it does not mean a necessary or indispensable relation to this nation or family.

Q. I will call your attention to the paragraph which says "Such are the characteristics of the man who is at the same time an eagle who surprises and devours". This word "man" is in its construction singular, can you tell whether or not the meaning of it is singular also?

A. I do not understand so, and I can give you examples of where the construction is singular and yet the meaning is plural, as for instance when I say "God came to save the man", understanding by this word "man" the human race, the plurality of all the men, and I am confirmed in this belief of mine by the way in which the whole article is written, where the plural is always indicated, and considering this paragraph which has just been mentioned by you with all the others, including the next following where the author again starts to use the plural, and I believe sincerely that the paragraph cited by you must be understood to have a plural meaning.

Q. And the qualifications which are attached to this word "man", what is the literary meaning of that?

A. Naturally of course it has the same meaning we give to "man", because having used "man" in the singular it would result
250 that the construction would be very defective in using afterwards names and epithets in the plural. Therefore from the way of alluding to the eagle, vulture, owl and vampire I understand that all these animals mean to signify the plural.

Q. Are these words here used in their ordinary sense or in a symbolic sense?

A. I do not know, Mr. Lawyer, any man who is at the same time an eagle, an owl, a vulture and a vampire, and I do not think even in the widest expressions in mythology you would find such a collection of so many diverse animals. It is therefore natural to suppose that the significance is figurative, that is to say used here as symbolic.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Applying your literary learning to the consideration of this article your understanding is that it does not apply to any individual but to a nation, or city, or to humanity generally?

A. Entity do you mean?

Q. Yes, if you want to call it so.

A. Entity is also a person, entity is all that is and can be.

Q. Does this article refer to an individual?

A. It seems to me that it does not, Mr. Prosecuting Attorney.

Q. What does it refer to as ascending the mountains of Benguet, a nation or a city?

251 A. Do you refer to the railroad company: I believe that also reaches as far as that?

Q. Is that your understanding of this paragraph to which I have just referred: that it refers to railroads ascending the mountains of Benguet?

A. Do you mean to ask my private opinion in regard to this particular paragraph?

Q. Your opinion from a professional standpoint as a man learned in literature?

A. As I have stated already, I formed the idea from the reading of the whole article that it was impersonal, in the sense that it does not refer to a particular person, but in general to collectivities.

Q. I will ask you now if you can explain certain portions of this article in consonance with your general understanding of the whole article?

A. What portion do you refer to?

Q. And therefore I ask you what does this article mean in consonance with your general understanding of the whole article when it refers to something ascending the mountains of Benguet for the purpose of measuring the skulls of the Igorot, etc.?

A. My explanation would have to be a lengthy one, may I be permitted?

The COURT: Proceed, if the question has got to be answered.

Mr. SOUTHWORTH: I will ask you to confine yourself to the question that I have asked you?

A. The intention that the author of the article might have
252 I do not know, but it seems to me that he might refer perhaps to a company engaged in the exploitation of Benguet, or perhaps it would be more applicable to that railroad company who intend to go as far as that height, and as to the detail to which you have called my attention, namely that relating to the measurement of the skulls of the Igorot, and which may seem a little confusing, as El Renacimiento has never shown any great love towards the tyranny of the Friars, who have also devoted themselves to the measurement of the skulls of the Igorot, I believe that this might refer to the Friars.

Q. Can you explain the connection between measuring the skull of the Igorot and the railroad ascending the mountains of Benguet?

A. I have already made the distinction between the two, Mr. Prosecuting Attorney, that the railroad company is trying to reach as far as that, and that the Friars have also measured the skulls of the Igorot.

Q. I believe you have stated that the plural form was used almost altogether in this article, and that was one reason why you believed that certain things in the latter part of the article referred to men collectively, and not to an individual?

A. Yes sir.

Q. I will call your attention to all of the paragraphs about which you were questioned, beginning with "Ascending the mountains of Benguet" and ending with "at the expense of the blood of the people"; and will ask you to state if in any of these six para-
253 graphs the plural form is used?

A. It seems to me, Mr. Prosecuting Attorney, that all these paragraphs are plural, because all have reference to the former paragraph which says "There are men who, besides being eagles", etc.

Q. I will ask you to begin with the first paragraph to which your

attention was directed and ask you whether that commences with the singular or plural participle?

A. "Ascending the mountains of Benguet to classify and measure the skulls of the Igorot"?

Q. Yes, what is the number of the participle with which that paragraph begins, plural or singular?

A. What you have here refers to the words "There are men who".

Q. I do not want to know to what it refers, I am asking you whether the word "subiendo" is singular or plural?

A. It can be used both as plural and singular.

Q. I will refer you to the next paragraph beginning with the word "autorizando", is that singular or plural?

A. It could be used for the singular or the plural, authorizing the man, or authorizing the men.

Q. Is there any other form of that participle which is ordinarily used for the plural?

A. I do not remember at this moment.

Q. I will call your attention to the next paragraph which begins with the word "presantandose," is that the singular or plural of that participle?

254 A. It can be used both as plural or singular, presenting the man or presenting the men.

Q. Referring to the participle at the beginning of each of the next three paragraphs, is it singular or plural?

A. As I have stated it can be used in the singular or the plural.

Q. I believe you stated that one reason why you believed that this article did not refer to an individual but to a nation was because of the biblical words which were written upon the Babylonian temple, Mane, Tecel, Phares, is that true?

A. No sir, that is not the only reason for my believing so.

Q. That was not my question, I asked you if it was not true that you gave that as one of your reasons why you believed that it did not refer to an individual but to a nation?

A. No sir.

Q. What did you state in regard to the matter?

A. That this biblical inscription had reference to the general tone of the article, which seemed to me to give warning to the people and threatening oppressors with the justice of God.

Q. I will show you what purports to be a cartoon in the periodical "Lipang Kalabaw," which I ask to have marked Exhibit F. of the government, and will ask you if that same inscription is not used, Mene, Tecel, Phares, is not used in this cartoon, and if

255 it is not a fact that this cartoon refers to a particular individual and not to a nation, or mankind in general?

A. One sees here a king seated at a table whereon is written the words "Cartera del Interior": do you refer to all the persons of all the Carteras del Interior, because I do not see anyt-ing here that would indicate this engraving refers to the Philippine Islands.

Q. Now you state that there is nothing upon that cartoon which refers to the Philippine Islands, I call your attention to the follow-

ing language "Significa, oh Rey Poderoso de Amburayan, Bukidnon y Benguet, que debeis dimitir en cuanto salga el sol"?

A. Your question is, what is my opinion in regard to that?

Q. No, the question is does not that refer to the Philippine Islands?

A. It seems to be.

Q. Then you do think this cartoon refers to the Philippine Islands?

A. This refers to the King of Amburayan, Bukidnon and Benguet. I do not know what king that is, I do not think there is any such king.

Q. I will ask you to bring your literary knowledge to bear upon the consideration of this cartoon and the language written in it, and will ask you if this reference to the Secretaryship of the Interior does not refer to the Secretaryship of the Interior of the Philippine Islands?

256 A. It seems to me, Mr. Prosecuting Attorney, that it refers to the Philippine Islands, but not to the Secretary of the Interior, because I do not see any similarity between this horrible picture here and the Hon. Commissioner and Secretary of the Interior, Mr. Worcester, and furthermore the figure here has a crown on his head and wears the royal purple, and nothing could be further from the democratic idea of Mr. Worcester.

Q. Is it not permissible to use figures in cartoons as well as in speeches or language?

A. My literary knowledge does not embrace this, Mr. Prosecuting Attorney, it does not go so far as to critically interpret the figures or characters in a cartoon.

Mr. SOUTHWORTH: I desire to offer in evidence this cartoon concerning which this witness has testified, as Exhibit F.

Sr. AGONCILLO: Objected to as irrelevant and immaterial.

The COURT: It may be received.

Sr. AGONCILLO: Exception.

Mr. SOUTHWORTH: That is all, Sr. Ravago.

GUY S. LANE, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DIOKNO:

Q. State your name?

A. Guy S. Lane.

257 Q. Where do you live?

A. At No. 238 Calle Herran.

Q. What is your occupation?

A. Clerk of the Municipal Board.

Q. I will hand you two volumes and ask you to state what they are?

A. These are the minutes of the meetings of the Municipal Board of the City of Manila.

Q. Will you kindly indicate among these minutes those which

have connection with the meeting of the Municipal Board of April 10th, 1908, and the meeting of August 5th, 1908, referring to the purchase by the city of some land of Judge W. J. Rhode at San Antonio de Abad, Malate?

A. Here they are.

Q. Please look at these two documents I now hand you, which are marked for identification Exhibits D. 22. and D. 23., and state whether or not they are authentic copies from the original?

A. These copies here are certified to by the Secretary of the Municipal Board under his seal.

Sr. DIOKNO: I offer in evidence these two documents which have just been identified as certified copies of the original, as Exhibits D. 22. and D. 23.

The COURT: They may be received.

Q. Please look at this roll of papers I now hand you and state what is this document dated April 20th, 1908, addressed to the Acting Secretary of the Municipal Board?

258 A. This is a letter from the Secretary of the Advisory Board to the Acting Secretary of the Municipal Board under date of April 20th, 1908, stating that the Advisory Board did not approve of the purchase by the city of a tract of land in Malate and paying thirty-seven thousand pesos therefor for the purpose of a park, and calling attention to the section of the Charter of Manila relating to such matters.

Q. Where is the original of this document?

A. I do not know. I think it is on file in the office, this is a carbon copy.

Q. Have you seen the original of this document?

A. Certainly, I saw it when the letter came, the original and this copy.

Q. Is this a correct copy of the original?

A. Yes sir, it is a carbon copy made at the same time.

Q. Who signed this document?

A. Vicente Rodriguez, Secretary of the Advisory Board.

Q. And you have not the original in your office?

A. No sir, the original would be in the office of the Secretary of the Municipal Board, but I am not sure whether it is there or not.

Sr. DIOKNO: I ask the Prosecuting Attorney whether he has any objection to admitting the carbon copy instead of the original.

Mr. SOUTHWORTH: I do not insist on that and will not make that objection, if it comes from the office of the Municipal Board.

Sr. DIOKNO: I now offer this carbon copy in evidence and

259 ask that it be marked Exhibit D. 24.

Mr. SOUTHWORTH: Objected to as immaterial

The COURT: It may be received for the present, and will be stricken from the record if not connection with the issue in the case.

Sr. DIOKNO: That is all.

Mr. SOUTHWORTH: No cross examination.

JOSE MARIA ROMERO Y SALAS, recalled in behalf of the defendant, testified as follows:

Direct examination by Sr. SALAS:

Q. What knowledge have you got of the Spanish language?

A. What might be obtained from fifteen years study in universities and twenty-five years connection with newspapers.

Q. Having been born in Spain, at what age did you come to the Philippine Islands?

A. When I was thirty-three years of age for the first time.

Q. You are acquainted with the profession of journalism?

A. I have been exercising it without interruption in the Philippine Islands from the year 1887.

Q. I will show you Exhibit A. of the prosecution, an article entitled "Aves de Rapiña," and will ask you to kindly state if you have had an opportunity of reading that article?

A. It is my practice to secure data and to study all articles which may be declared to be punishable by the courts, for the
260 purpose of informing myself in relation thereto and formulating an opinion thereof.

Q. Can you make up your mind in regard to this article without reading it again?

A. Yes sir, I believe I can do that without separating myself from my conscience.

Q. What is your opinion in regard to this article: do you think it refers to a single person only, or could it also refer to several persons?

A. From the reading of the title alone it is shown that this is an article of generalization. It is entitled "Birds of Prey," and from this title it is shown that the article does not refer to a particular person, but that the intention is to criticise a general vice and that the purpose of the writer is to iterate a word of warning as to what such a general vice must necessarily lead to.

Q. Please explain on what you base this opinion of yours?

A. From the spirit of the article, from its tone of generality and the way in which the facts are stated, and from the careful omission of particulars and the conclusion reached.

Q. I will call your attention to the paragraph wherein mention is made of the eagle symbolizing liberty and strength, can you tell us the general signification of that paragraph in respect to your former statement?

A. This paragraph seems to have the signification of exploitation generalized, in the sense of collectivity, and that the eagle
261 is the symbol of liberty and strength.

Q. Now taking this paragraph together with the preceding paragraphs, and to what class of person or entity might it refer?

A. In general to all those who commit the crime of exploitation or rapacity.

Q. I will call your attention to the following paragraph where it says "There are men who, besides being eagles, have the character-

istics of the vulture, the owl and the vampire;" does this paragraph refer to a particular person?

A. No sir, it is a generality, and no honorable person who has a clear conception of the accomplishment of his duties could consider himself alluded to or would take this alone as an offense, it is an absolute generalization symbolical of all men who have the characteristics of the vulture, the owl, and the vampire.

Q. Taking this paragraph in relation with the following and on the hypothesis that a determinate set of facts appear in the following paragraph that might refer to a particular person as having executed these acts, would this fact exclude that the facts set forth in the other paragraphs might be applied to one or two other persons?

A. It could not be applied and considered even, except by the person who has committed the facts stated here; no respectable honest person that complies with his duties in his private and official capacity could be understood in this classification.

262 Q. I will call your attention especially to the paragraph which begins with the word "subiendo' and ends with the words "beneficio proprio": now on the hypothesis that it is shown that a particular person has ascended the mountains of Benguet to classify and measure the skulls of the Igorot" etc., would this exclude that the balance of the paragraph might refer to another person distinct from this hypothetical one?

A. In all the words or facts mentioned in this article I do not find any concrete word addressed to a certain person, although it is evident that the author of the article is not thoroughly versed in the intricacies of the Spanish language, and I may say that no Spanish Court, strict and impartial, would apply the law of libel to this article, I mean if it understood the intricacies of the Spanish language.

The COURT: It is not necessary for the witness to express opinions outside of answering the question.

WITNESS: I did not mean that.

The COURT: Proceed with the examination.

Q. Now calling your attention to the next paragraph which begins with the word "autorizando" and ends with the words "posicion oficial": supposing the paragraph before referred to beginning with the word "subiendo" might refer to a particular person, in your opinion would this exclude that the next parragraph could be applied to another different person?

A. This paragraph in one way is incorrect in a certain way, there is no cohesion in its different parts, because it seems to refer

263 to one who authorizes the slaughtering of infected cattle so as to obtain profit for his own benefit, and that has no relation to the one who authorizes the killing of these cattle, which killing does not give him any profit at all.

Q. So according to the opinion you form of this text, even if certain facts referred to a particular person this would not exclude that these facts could refer to another person also?

A. Absolutely not, as I have stated this article has only a general application.

Q. I will call your attention to the paragraph which says "Such are the characteristics of the man who is at the same time an eagle who surprises and devours" etc. according to the context of this paragraph what is the sense of that proposition?

A. The same.

Q. Does it refer to a particular person, or not?

A. In order that this might refer to a particular person, understanding the word "man" in the singular, it would have been necessary for the author to commence from the title of the article, and furthermore to mention the name of the man. That not being done here the word "man" is used in a rhetorical way, and is equivalent to the whole human race.

Q. The epithets here of eagle, vulture, owl and vampire, in what sense are they used?

A. In the same sense as the word "man", as a generalization, as one might say that the man is the son of his doings, in this
264 sense the word "man" is generalized to mean the whole human race.

Q. And the next paragraph which says "It is these birds of prey who triumph"?

A. In this sense it is equivalent to "men."

Q. Then you mean to say that the words "birds of prey" is a continuation of the allegorical sense as from the beginning?

A. Yes sir, that is absolutely so.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. You say that the language in this article refers only to a man who commits the acts therein denounced, do you?

A. No sir, the whole article is of a general character, and it is evidently written to warn people against the abuses of exploitation, it has no individual or personal tendency. In my professional duties I made a careful analysis of it shortly after it was denounced, and from this analysis I gathered that the meaning of the author was to show the Filipino people the course they should pursue before the exploiting stratagems of the powerful against the weak, or the oppressor against the oppressed. The facts therein stated are so varied that it is not possible to suppose that they were accomplished by a single person. In general it shows up a system in order to condemn it and to encourage the Filipino people to defend
265 themselves against it. The same generality of concepts with which the article is woven closes the way to all supposition that it refers to a concrete person.

Q. The paragraph beginning with the word "subiendo" refers to a man who ascended the mountains of Benguet to classify and measure the skulls of the Igorot, does it not, whether that man was Mr. Worcester, or some other man?

A. No sir, it might refer to an army climbing up there.

Q. You think it might refer to an army climbing the mountains of Benguet?

A. Yes sir, it might.

Q. And the paragraph which refers to importing fish eggs into the Philippine Islands, might that refer to an army importing fish eggs into the Philippine Islands, or to some man importing them?

A. That might be a man and might be two men or three.

Q. But whether it refers to five or fifty or one man, it refers to some person that imported fish eggs into the Philippine Islands, does it not?

A. Naturally.

Q. Then if Mr. Dean C. Worcester is the only man who ever imported living fish eggs into the Philippine Islands, that article referred to him, did it not?

A. I would not dare to say as much as that.

Q. How much will you dare to say on that point?

A. Because here in this article are recited many facts.

266 Q. I am talking about this particular fact of importing fish eggs into the Philippine Islands?

A. If the Prosecuting Attorney states that Mr. Worcester is the only person who imported fish eggs into the Philippine Islands, this fact may have been known by the author of this article, but the only knowledge I have of it is because it was published in the newspapers that this was done by Japanese officials and experts, who had established here fish ponds to acclimatize them for the purpose of placing species from Japan in the seas and rivers of the Philippine Islands.

Q. Well as an expert I am putting to you a hypothetical question: supposing the evidence in this case showed that Mr. Dean C. Worcester is the only person who imported living fish eggs into the Philippine Islands, does this paragraph refer to him?

A. I believe the article refers to all who did that.

Q. Well suppose there was only one who did it, would the article refer to him?

A. I would not dare to say so much, as to what had been the intention of the author.

Q. Could it refer to anyone else?

A. Yes sir.

Q. Do you state that it could refer to a man who never imported living fish eggs into the Philippine Islands?

A. No, but I have information of it and have circulated it in my paper, that there were Japanese who brought fish eggs here.

267 Q. Have you information that Japanese fishermen have imported living fish eggs into the Philippine Islands for the purpose of supplying the streams of these islands with fish?

A. I refer to, and it seems to me that it has been made public that Japanese officers came here, invited by the Government, for the purpose of propagating here in the seas and interior rivers of the Philippine Islands certain classes of fish, and I furthermore understood that the results of this experiment were negative.

Q. Now calling your attention to the paragraph in which it says "Such are the characteristics of the man who is at the same time an eagle who surprises and devours", I will ask you to state what kind of an article is the word "del" before "hombre" in that paragraph?

A. As to "man" singular, but the meaning of it is plural.
Q. Is it a definite or an indefinite article?
A. Indefinite article by the meaning that is given here.
Q. Will you give me an example of the definite article in Spanish then?
A. Yes sir.
Q. What is it?
A. El sombrero de Romero, the hat of the man, or the hat of the Spaniard.
Q. This says "the man", does it not?
A. Yes sir.
Q. That is "The" man, is it not?
268 A. No sir.
Q. In the grammatical sense is not "del" or "el" a definite article in Spanish?
A. That is according to the conception, to the sense of it, it might be definite or indefinite.
Q. To whom as directed does this paragraph refer to?
A. To the characteristics of the man, of the human species, that unites these conditions.
Q. Does it not refer to the characteristics of the man who commits the acts mentioned in the preceding paragraph?
A. All men that were capable of and did acts similar to those mentioned in this article.
Q. Supposing there is only one man who had committed these acts described in the preceding paragraphs, then it is true, is it not, that these characteristics refer to that man?
A. If there is one man capable of committing or that might have committed the acts charged in this article, it does not allude and cannot allude to him, because the intention of the article and the text of the same is general and does not cite particular facts nor cite any particular person at all. The paragraphs of this article in which the charges or imputations appear to be particularized, and the singular employed instead of the plural, does not discredit in the least the conception of generalization, because it is very common in our language to employ the rhetorical figure which uses
the singular to denominate the entirety of the species to
269 which this singular refers, for example, when in this article it says "the man" it refers to and signifies the entirety of all men: this is a literary and rhetorical resource that proclaims the classics of our language.
Q. Well, there is a definite and an indefinite article in Spanish, is there not?
A. Yes sir.
Q. What is the definite article in Spanish?
A. The definite article in Spanish is that which refers to——
Q. I have not asked what it refers to.
A. It refers to a relation with a person or a particular thing.
Q. Give me the name of the definite article?
A. From the moment that it refers to a particular thing it is definite.

Q. What is that article?
A. El, la and lo, all three.
Q. What is the indefinite article?
A. It is used in relation to a general fact or with a general thing
Q. Give us the name of the indefinite article?
A. Sombrero de Romero is an example of a definite article.
Q. I am not asking for examples, I am asking you to give the name of the indefinite article in Spanish, the word?
A. "De" is not an article.
Q. Nobody asked you about "de."
A. El, la and lo.
270 Q. These are definite articles, are they not?
A. They are definite or indefinite according to how they are used in the sentence, that is what it is necessary for you to become familiar with, Mr. Prosecuting Attorney.
Q. You say that el, la and lo are definite articles?
A. Definite or indefinite, that depends upon the way they are used in the sentence.
Q. Now give us an indefinite article.
A. Strictly speaking there are none.

Mr. SOUTHWORTH: That is all.

Redirect examination by Sr. SALAS:

Q. In answer to a question addressed to you by the Prosecuting Attorney in cross-examination as to the person to whom might refer the paragraph beginning with the word "presentandose" and ending with the words "otros climas", did you mean to say that there is no necessary relation between the acts as stated in this paragraph and the acts stated in former paragraphs and subsequent paragraphs, and that the acts referred to in the former and subsequent paragraphs might refer to other persons?
A. Yes sir.
Q. Now talking more plainly: could all these paragraphs refer to a single person?
A. No sir, in order that they might refer to a single person it would be necessary that all the acts specified in the article,
271 with the multiple variety of kind and place, should be done by that single person, and that this has been done I have not the slightest idea.
Q. According to that each paragraph might refer to a different persons?
A. Yes sir.

Sr. SALAS: That is all.

Recross-examination by Mr. SOUTHWORTH:

Q. Is that the construction you place upon this article, that each paragraph refers to a different person?
A. Yes sir.
Q. Then there are several distinct persons referred to in that article?

A. Yes sir, many persons.

Q. One person is referred to as ascending the mountains of Benguet, and another person is referred to as importing fish eggs into the Philippine Islands?

A. Yes sir, it might be.

Q. And in each one of these paragraphs different persons are referred to, are they?

A. As there are a multiplicity of facts they might refer to a multiplicity of persons.

Mr. SOUTHWORTH: That is all.

272 MIGUEL VELASCO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DIOKNO:

Q. State your name?

A. Miguel Velasco.

Q. Where do you live?

A. At No. 2 Calle Uli-Uli.

Q. What is your occupation?

A. Proprietor and Broker.

Q. Were you at any time a member of the Advisory Board of the City of Manila?

A. Yes sir.

Q. When?

A. From the time of the organization of the Advisory Board until it went out of existence.

Q. What position did you occupy on that Board?

A. I was the president of the board from the time it was organized, and continued as such until it went out of existence.

Q. As president of the Advisory Board, did you have any duties to perform upon the Municipal Board of the City of Manila?

A. Yes sir.

Q. As president of the advisory board and as member of the municipal board, did you have any knowledge of the purchase by the city of certain lands from Judge Rohde?

A. Yes sir.

273 Q. Do you know whether or not the Advisory Board took any action in relation to that sale?

A. The Advisory Board passed a resolution protesting against this sale, for having incurred an obligation of more than twenty thousand pesos without having consulted beforehand with the Advisory Board.

Q. Do you know whether or not that is made to appear in any record, that protest?

A. Yes sir, that appears in the minutes, and later on in a communication addressed to the Governor General.

Q. Do you know whether or not there was also a communication addressed to the Municipal Board?

A. The communication was first sent to the Municipal Board be-

fore it went to the Governor General, protesting against the action of the board without complying with the requirements of law.

Q. Will you kindly examine the document I now hand you, marked Exhibit D. 24., and state if you know what it is?

A. Yes sir, this is the communication I have just referred to in my testimony.

Q. Does this letter form part of the decision of the Advisory Board?

A. The protest was not based on account of this decision, it only refers to this thirty-seven thousand pesos which according to the judgment of the Advisory Board could have been expended for a better purpose. The real objection of the Advisory Board was that of their having passed a resolution and taking action without having first heard the opinion of the Advisory Board.

274 Q. Was this communication addressed by order of the Advisory Board?

A. The Secretary of the Advisory Board addressed this.

Q. But by order of the Advisory Board?

A. Yes sir.

Sr. DIOKNO: That is all.

Mr. SOUTHWORTH: No cross-examination.

PABLO B. HERRERA, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DIOKNO:

Q. State your name?

A. Pablo B. Herrera.

Q. Where do you live?

A. At No. 6 Calle Penalosa.

Q. What is your occupation?

A. Draftsman.

Q. Are you employed in the city of Manila?

A. Yes sir, in the Bureau of Internal Revenue.

Q. Since when have you been employed there?

A. From the year 1901.

Q. Do you know the land purchased by the city of Manila at San Antonio de Abad, Malate?

A. Yes sir.

Q. Have you seen that land?

A. Yes sir.

Q. When?

A. In 1902 and 1903.

275 Q. Do you know anything about the condition of that land?

A. Yes sir.

Q. What was that land at the time you saw it?

A. It was a mangrove swamp, and also used for the extracting of salt.

Q. Is there a memorandum in your office relating to the condition of that land?
A. Yes sir.
Q. From the time you first saw that land until the present time was there any change in regard to the condition of that land in the data in your office?
A. No sir.
Q. For what purpose did you go there?
A. To see if the land was low or high.
Q. In your capacity as an official employee, did you go there?
A. Yes sir.
Q. And how did you find that land, low or high?

Mr. SOUTHWORTH: Objected to as immaterial, they have not shown any connection of Mr. Worcester with this land.
The COURT: They can prove the truth of any statement made as far as the libel law is concerned; if the object is to show that the city bought land at an exorbitant price they may proceed.
Q. How did you find that land, low or high?
A. Low.
Q. After the investigation made by you in regard to the condition of that land, did you inform your office?
A. Yes sir.
276 Q. Who did you inform?
A. The Chief of the Division.
Q. Verbally?
A. Yes sir, verbally.

The COURT: That is entirely immaterial.
Sr. DIOKNO: That is all.
Mr. SOUTHWORTH: No cross-examination.

The hearing was then adjourned until the following morning at eight o'clock a. m.

JANUARY 14TH, 1909.

Pursuant to adjournment the case was called this a. m., with the following appearances: Mr. Southworth in behalf of the government; Srs. Agoncillo, Salas and De la Rosa on the part of the accused, Teodoro M. Kalaw.

RICARDO AGUADO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?
A. Ricardo Aguado.
Q. Where do you live?
A. At No. 227 Calle Real, Ermita.
Q. What is your occupation?
A. Merchant.

277 Q. Will you kindly state to the Court whether or not you have been a member of the Advisory Board of the City of Manila?

A. I was a member of the Advisory Board until it went out of existence, I do not remember what date?

Q. Don't you remember when you ceased to perform your duties as a member of the Advisory Board?

A. I cannot state precisely?

Q. Not even the year?

A. Last year.

Q. Will you kindly state to the Court whether or not you have knowledge of the sale of a tract of land situated at San Antonio de Abad, Malate?

A. From what I read in the newspapers I learned of the sale to the city, through their agent, the Municipal Board, of some land which is situated or said to be situated at Pasay.

Q. Will you kindly make yourself familiar with the document which I now hand you, marked Exhibit D. 22., which is an authentic copy of a portion of the minutes of the Municipal Board, and state what you know in regard to the facts therein stated?

A. This document is composed of three parts; the first refers to the proposition of Judge Rohde to sell to the city of Manila one hundred thousand square meters of land on the Estero de San Antonio de Abad, Malate, at the rate of thirty-seven and a half centavos per square meter; the second part consists of a resolution of the Municipal Board in which it appears that the city of
278 Manila accepts the offer of Judge Rohde for the one hundred thousand square meters of land, paying for the same at the rate of thirty-seven and half centavos per square meter; and the third part of this document consists of another resolution of the same Municipal Board which authorizes the payment by the disbursing officer of the Municipal Board to Judge Rohde of the sum of twenty thousand pesos from the funds appropriated by Act No. 1727 which refers to bridges, esteros, parks and streets, and that the balance of seventeen thousand five hundred pesos be paid during the fiscal year 1909.

Q. After having read the document please state to the Court whether or not that sale was carried into effect in favor of the city of Manila?

A. It seems to be so.

Q. I will show you another document, marked Exhibit D. 23., and will ask you to state what you know about it?

A. I remember this document.

Q. Did you have anything to do with that protest as a member of the Advisory Board?

A. I believe so, but the best evidence would be the minutes of the Board, wherein it appears what members were present at the session or sessions in which this matter was dealt with.

Q. I must inform this witness that this is an authentic copy of the minutes presented here by the Secretary of the Municipal Board,

and for that reason I ask the witness whether or not he in-
279 tervened in that protest as a member of the Advisory Board on the date to which this certified copy of an excerpt from the minutes of the Municipal Board refers?

A. As a matter of fact this document, Exhibit D. 24., may be the same communication that the Advisory Board sent to the Acting Secretary of the Municipal Board, but I not being the one who prepared it cannot state whether or not this is the original and authentic protest that the Advisory Board made in regard to this matter. I am therefore constrained to believe that the only person who can answer about this matter is the Secretary of the Advisory Board, who is the author of this document.

Q. Please state then whether or not, as a member of the Advisory Board, you protested against the sale of that land to which this protest refers, as shown by this document you have now before you, Exhibit D. 24.?

A. I believe I have already answered that, Sr. Agoncillo, that I remember that the Advisory Board made a protest against the purchase made from Judge Rohde.

Q. Will you now please state the reason that the Advisory Board had for making that protest?

A. I do not know very well the reason why the Advisory Board on that occasion made this protest, and for that will have to refer you to the minutes where the meetings of the board appear and showing everything that was done in the session referred to; and furthermore in this letter of the Secretary of the Advisory Board, in its last paragraph, I believe that the specific reason appears that the
280 Board had for protesting, that is to say that they considered there were other necessities of the city of far more importance than the acquisition of this land, and there were some other points which at this moment I do not remember.

Q. Please state to the Court whether or not you had knowledge that a gentleman by the name of Nicanor Abella of Malate offered the Municipal Board to sell one piece of land at a price less than that which was paid by the city for the land purchased from Judge Rohde, that is per square meter?

Mr. SOUTHWORTH: Objected to on the ground that it is immaterial and has no connection with the issues in this case.

The COURT: It is simply attempting to show the truth of one of the allegations, that land was sold to the city at an exorbitant rate, and the fact that somebody else offered land in the same vicinity at a less price might have some weight. The witness may answer.

A. I do not remember the fact just mentioned by Sr. Agoncillo, and if this was considered at a meeting of the Advisory Board I will have to refer him to the records of the Board, which will disclose it.

Sr. AGONCILLO: That is all.

Mr. SOUTHWORTH: No cross-examination.

281 JOAQUIN PELLICENA CAMACHO, recalled in behalf of the defendant, testified as follows:

Direct examination by Sr. SALAS:

Q. Will you kindly state to the Court what knowledge you have of the Spanish language?

A. The studies to which I have devoted myself in my profession as a journalist.

Q. Have you not also studied in some college?

A. Yes sir.

Q. Can you state to the Court how long you have made these studies?

A. Seven or eight years, until I obtained the title of Bachelor of Arts.

Q. Since when did you acquire the Spanish language?

A. Since I commenced to talk.

Q. I will show you Exhibit A. of the Government, and will ask you to state to the Court whether or not you have read this article?

A. Yes sir, I read it the day following its publication.

Q. Will you kindly read it again, so as to give your interpretation of this article?

A. Yes sir, I have read it.

Q. According to the context of this article could it or not refer to two or more persons?

A. From the simple reading of the article it may be deduced that it refers to each and every one of the officials of the country who may desire to benefit themselves at the expense of the public.

282 Q. When you say "all", do you mean to say more than one person?

A. Yes sir, it refers in general terms to all those persons, to entities, whether collective or particular, which commit the acts referred to in the article.

Q. Will you kindly state on what you base your opinion for giving this interpretation to this article?

A. From the context of the article, commencing with the title itself to its final paragraph. The article is entitled "Birds of Prey" in the plural.

Q. Calling your attention to the paragraph which commences with the words "Hay hombres" and ends with the word "vampiro", can you state to the Court the meaning of that paragraph in relation with the preceding paragraphs?

A. This paragraph says: "There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire." This paragraph can have but one general sense, I do not consider that it refers to a determinate person, especially if you connect it with the preceding paragraphs.

Q. Now connecting it with the paragraph which commences with the words "Such are the characteristics" and ending with the word "bloodless", can you explain to the Court if that general character is confirmed?

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A. The general character is not only confirmed, but in my judgment it is amplified. This phrase "Tales son las caracteris-
283 ticas del hombre", as used in Spanish has a general character and does not refer to a determinate person. It is a common custom in Spanish to generalize the thought, and that is what is done in this paragraph, and many examples might be given in which the word "hombre" is used in that sense, for instance "El hombre propone y Dios dispone", "El hombre es fuego, la mujer estopa y viene el diablo y los sopla", and other analagous expressions which I do not remember at this moment.

Q. Can you tell us whether the use of this word "hombre" coming after the words "Tales son las caracteristicas" weakens the general character to which you have referred?

A. Not at all, as is shown by the examples just given by me, and probably there will not be found a single person who understands Spanish thoroughly, who would hesitate to assure that the one phrase is essentially analagous to the other. For example "Tales son las caracteristicas" preserves the same sense whether you change the word "hombre" for "hombres" or not, the sense of the paragraph or its signification is not altered in any way.

Q. In relation to the construction of the epithets which follow one another in the same paragraph, can you explain to the court the meaning of these epithets in their grammatical construction?

A. Yes sir, in the paragraph which says "Tales Son las caracteris-
ticas" etc., this paragraph interpreted correctly signifies that
284 the characters of the persons or entities to which the article refers are sometimes the eagle who surprises and devours, the vulture who gorges himself on dead and putrid meats, and the owl who affects a petulant omniscience, and is a distinct means of qualifying the acts to which the article refers, that is to say of the entities, whether corporate or individual, that commit the acts which are similar to these figures. This is very common in journalism and in literature generally, and none of these epithets are taken as referring either directly or indirectly to a determinate person.

Q. And the following paragraph of three lines which says "Estas aves de Rapiña son los que triunfan", can you state how this construction, which is in the plural, conforms with the construction of "man", which is singular in the preceding paragraph?

A. Very easily, the phrase "aves de rapiña" is equivalent to such birds of prey, that is to say, eagles, vultures, owls, in the same way that I have stated that the word "man" as used in the preceding paragraph has a general sense equal and identical with "men" or human beings. There are also examples of this, for instance we say "el gentio era muy numeroso y todos ellos hablaban en voz alta", "gentio" is singular and all the rest is plural. And the same thing applies to this word "Estas" in connection with "aves de rapiña", and which refers to the entiry or corporation that commits such acts. That I understand is the meaning of the writer of this article.

285 Q. So you mean to say that notwithstanding the difference in the grammatical shading of the words, that there is a relation between the different paragraphs of this article?

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A. Yes sir.

Q. After this analysis which you have just made, on the hypothesis that one or two of these paragraphs might refer to a determinate person on account of its having been proven that he has committed such acts, would that exclude the application of the other paragraphs to other persons. Supposing one or two of the paragraphs referred to a person who had committed such acts, could the other paragraphs apply to other persons, or not, or would it exclude that the other paragraphs might apply to other persons?

A. By no manner of means, quite the contrary.

Q. Can you explain that?

A. Yes sir, it is evident that in an article like this the author of it came to a general conclusion, the basis of which were the acts actually committed at one time or other and which had taken place at different localities, and which had been committed by different persons, and if this were not so the article would not have been general in its character. Taking all this into consideration and it is evident that even if one or two paragraphs might appear to be in accordance with the facts as having been committed by one person,

286 that would be no reason for assuming that the other paragraphs necessarily referred to that person. Nobody would make an assertion of that kind.

Q. From your technical knowledge of the Spanish language would you say that this article was written in the allegoric style?

A. Undoubtedly, there are several allegories in the article.

Q. When the Spanish language is used in the allegoric style, what interpretation is given to the ideas expressed?

A. Ordinarily, in fact I may say always, when the language is used allegorically, in general terms, it does not refer to any determinate personality whatsoever.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. I understand you to say that this article refers to all the government officials of this country who committed the acts therein referred to, is that true?

A. Yes sir, it refers to entities, individuals or corporations.

Q. Then it also refers to each and every official of the islands who commits those acts, does it not?

A. I do not understand that precisely.

Q. Then it refers to each and every official of the country?

A. All official employees who committed such acts, whether

287 it might be of this government, or other government.

Q. What other government?

A. To any government, in general terms.

Q. Then the article states that some officials or all of the officials of some government have committed certain acts which were denounced in the article, does it not?

A. No sir, in my judgment the article refers to officials of the government that committed such acts, and therefore they are identical with the epithets mentioned in the article.

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Q. But there is a positive statement in the article, is there not, that some officials have committed certain acts?
A. As I deduct from the article, the article does not say so.
Q. Does not the article charge that some officials have been patronizing certain hotel concessions on filled in land of the city at the cost of the blood of the people of the country?
A. Yes sir.
Q. Who did that according to the article?
A. The employees who might have done it.
Q. Then it does refer to employees who committed these acts?
A. What acts?
Q. Patronizing hotel concessions at the expense of the blood of the people of the country?
288 A. The article refers to the officials or employees who at the expense of the blood of the people of the country benefit themselves.
Q. Referring to the paragraph which begins with the words "Such are the characteristics of the man," I will ask you to state what is the masculine singular definite article in Spanish?
A. In Spanish we have not got a definite article; we have a determinate and an indeterminate article.
Q. What is the determinate article in Spanish?
A. El, la and lo.
Q. What is the masculine singular form of that?
A. El.
Q. Is that used in the plural sense?
A. The plural of "el" is "los."
Q. Then when "el" is used it refers to a singular noun, does it not?
A. The form "el" is singular, yes.
Q. Now I will ask you to state what is this "del" which appears before the word "hombre" in that paragraph?
A. The word "del" as used here, indicated in a grammatical way, expresses the singular.
Q. And refers to a particular man?
A. No, frequently in Spanish the singular form is used to express a thing in the plural.
Q. Then why do you use the plural form, when the singular form expresses the plural?
A. There are different forms used according to what is intended to be expressed.

Mr. SOUTHWORTH: That is all.

289 FERNANDO MARIA GUERRERO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?
A. Fernando Maria Guerrero.
Q. Where do you live?
A. At No. 33 Calle Gallera, Ermita.

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Q. What is your occupation?

A. At the present time member of the Philippine Assembly.

Q. Will you please state what studies you have made in the Spanish language?

A. Yes sir.

Q. Explain.

A. I have studied the Spanish language first in my young days in the primary classes of the Ateneo Municipal, and continued those studies in the University of Santo Tomas, and made still further progress while I was studying law.

Q. Will you kindly state how long you have been talking the Spanish language in view of these facts?

A. I believe I have been managing the Spanish language about twenty-five years.

Q. Have you been a journalist at any time?

A. Yes sir, I became a journalist in the year 1898, and pursued that avocation until the year 1907.

Q. Have you occupied any professional chair in Spanish literature?

290 A. Yes sir, in the Liceo de Manila I had under my charge the chair of rhetoric, poetry and general Spanish literature, and at the present time I am acting in a similar capacity in the Colegio "La Jurisprudencia."

Q. Are you also a member of the Committee of Style of the Assembly?

A. I am not a member of the Committee of Style but I belong to a special committee of three who have charge of the correction of style of the Diario de Sesiones of the Assembly.

Q. I will show you Exhibit A. of the Government, which is an article entitled "Birds of Prey," and will ask you to state if you have read that at any time?

A. Yes sir, I read it the day following its publication.

Q. Having the necessity of asking you concerning the interpretation of this article, I will ask you to be kind enough to read it again?

A. Yes sir, I have read it.

Q. According to the context of this article can you state whether it refers to a determinate person, or whether it refers to various persons?

A. This article, considering it from the point of view of its spirit and intention, and taking into account its material construction, as well as a comparison of its style, could not refer to any particular person. In my judgment a universal sense is used, a generic sense, and therefore it could not in any way refer to a special determinate person.

291 Q. Will you kindly give us your opinion as to the style of this article considering it in a literary sense?

A. The style is eminently literary, and at the same time it is emblematic or symbolic.

Q. On what do you base this opinion of yours that it is symbolic or emblematic in its meaning?

A. Because the general tone of the article is plural and does not refer to any special determinate person, and in all the paragraphs of this article the same character is noticeable. The author has used the plural always, and he has always employed certain signs or symbols to represent certain things or ideas.

Q. I will call your attention to the paragraph which commences with the words "Tales son las caracteristicas" and ends with the word "exangue," and will ask you to state whether that affects the tone of generalization which appears in the other paragraphs of the article?

A. In my judgment it does not, because even at first glance it is not in harmony with the rest of the article, in view of the fact that the singular form appears in the use of the word "hombre." However, according to all the rules and principles of grammatical construction that I know of in Spanish literature, there is no form more noble or more expressive than to use the singular, and in this case the singular contains a synthetic expression, an expression which I call "antonomasia," and in this case the singular has more force and more emphasis than the plural form.

292 Q. And all this refers to what language?

A. To the Spanish language.

Q. Can you cite some examples to corroborate this emblematic sense, this emphatic sense which is peculiar to the genius of the Spanish language?

A. I can cite many examples, but I believe that the following will be sufficiently graphic: "el hombre se distingue de los irracionales por su razón." In this case the word hombre does not refer to a single individual, and it is used in Spanish in the sense of humanity, and humanity is a collective body.

Q. What do you call that form of rhetoric?

A. That is called metaphor.

Q. Can you give the special name of this metaphor?

A. If I am not mistaken it is called "metonimia."

Q. And what does that figure consist of?

A. It consists in taking the individual for the genus.

Q. Taking the construction of this paragraph with the other preceding paragraph, is that generic sense kept up which you say predominates in this article?

A. My answer would be only as a result or consequence of that which I have already stated: that the word "hombre" in my judgment is used in an universal or generic sense on account of the figure or rhetoric which is employed, and therefore as I have already mentioned, the generalization persists in this paragraph which is found through the other paragraphs.

293 Q. So in saying here "Tales son las caracteristicas del hombre" it is the same exactly as if it said "Tales son les caracteristicas de los hombres?"

A. Yes sir.

Q. Taking the construction with the epithets in the following lines of the same paragraph, is that harmony preserved which you have stated appears throughout?

A. Yes sir.

Q. Will you explain the relationship of this paragraph to the following which commences with the words "Estas aves de rapiña" and ends with the word "detenidos," and state if the same sense of harmony is preserved in both paragraphs?

A. Yes sir, there is the same sense of collectivity which is expressed in the word hombre of the preceding paragraph, and this paragraph is in harmony with that sense.

Q. Can you give us the technical name of the form which makes the epithet and the words "Aves de rapiña" agree with the word hombre in the singular?

A. There does not exist any such special technical name, but there is what we call a correspondence between one paragraph and another.

Q. Do you know what they call "concordancia eliptica" in Spanish grammar?

A. Yes sir, there might be a "concordancia eliptica" in these paragraphs.

Q. Can you give us some examples of this "concordancia eliptica" in apparently diverse grammatical forms of construction?

294 A. I believe that these paragraphs could be used as an example to prove that "concordancia eliptica," and I do not believe there is any necessity of giving any further examples.

Q. From the text of this article, if you were to join all the paragraphs together, would the relation between the paragraphs be interrupted?

A. I believe I have stated that commencing with the heading of this article until the last paragraphs, the same tone or generic style is maintained.

Q. And therefore from one paragraph to another of this article there exists a perfect relation in this respect?

A. Yes sir, there exists this relation of generalization or collectivity.

Q. Could the general sense of all these paragraphs be understood as applying to a certain individual, or could certain facts stated in some of the paragraphs have been committed by certain persons and certain facts in still other paragraphs refer to other persons?

A. This diversity of application follows naturally, this tone of generalization, and it may well be possible that the different paragraphs might have reference to different persons.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Where did you read this article about which you have testified?

295 A. In my house while I was sick.

Q. Did it go through the mail to your house, or was it delivered by a messenger?

A. It was delivered by a messenger.

Q. A messenger of the newspaper "El Renacimiento?"
A. Yes sir.

Mr. SOUTHWORTH: That is all.

DAVID P. BARROWS, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?
A. David P. Barrows.
Q. Where do you live?
A. Manila.
Q. What is your occupation?
A. Director of Education.
Q. Will you kindly state how long you have been in the Philippine Islands?
A. Since October, 1900.
Q. Do you know the province of Benguet?
A. Yes sir.
Q. How do you know it?
A. I have visited it repeatedly, and traveled over it.
Q. Can you estimate approximately how many times you have visited that province?
A. Seven or eight times the length of it, and other visits to different towns.
296 Q. Can you tell the reason why you visited the province of Benguet?

Mr. SOUTHWORTH: Objected to as immaterial, unless they state that they expect to show that it is immaterial in some way, or propose to show that Dr. Barrows is the man to which this article refers.

The COURT: Perhaps they do, it is only in relation to that portion of the article I presume which has been indicated before, which would tend to show that he is the man who measured the skulls of the Igorot, etc. I think it is proper, and the witness may answer.

A. It was official business, either as Chief of the Bureau of non-christian tribes, or as Director of Education.
Q. So your reason for making these trips was to civilize or educate the Igorots?
A. It could be so considered.
Q. And in that way have you at any time made ethnological studies of the Igorots, or any other studies?
A. Yes sir, to some extent.
Q. Can you tell us what kind of ethonological studies you made?
A. Principally studies with reference to their language, social institutions and physical type, that is all.
Q. Do you know whether or not any other Americans besides yourself made similar studies of the Igorots?
A. Dr. Jenks made studies of the Igorots of Bontoc.
Q. Any other persons that you know of?

A. Commissioner Worcester has studied practically every body of the Igorots.

297 Q. Do you not remember any other person?

A. I do not think of any other person who has pursued such studies to the point of publishing his results.

Q. Do you know if those other persons mentioned by you, who went there besides you, made any endeavors to discover deposits of gold or other mineral wealth?

A. Either one of these two besides myself, do you mean?

Q. I mean any of these persons you saw in Benguet; do you know whether they made any endeavors to find veins of ore?

A. I met many persons in Benguet who were searching for gold or other mineral wealth.

Q. Were these persons Americans or foreigners?

A. Americans.

Q. Do you know if there were any results from these explorations made by them?

A. Many of them located claims and worked these claims.

Q. Can you tell us whether or not in that region of the Philippine Islands some mines are being exploited?

A. Yes, they are.

Q. Can you tell us who are the owners of these mines which are being exploited?

A. I know the owners of some of them.

Q. Please state the names of some?

A. Mr. Kelly and Mr. Clarke.

Q. You don't remember any more?

A. I could easily do so by refreshing my memory.

Q. Do you know if these persons went expressly for that purpose, and acquired these mines?

298 A. I understood from their own statements that they went there for the purpose of mining.

Q. And incidentally to study the Igorotes, is it not so?

A. No.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Did you go there to discover gold and other mineral wealth to appropriate it to your use afterwards in your visits to Benguet?

A. No sir, I had no interest of that sort.

Q. Did you have anything to do with making laws or unmaking laws governing the mineral resources of Benguet?

A. No sir.

Q. I will ask you to state whether or not you have had anything to do with the importation of cattle into the Philippine Islands, or making laws or rules and regulations governing the importation of cattle?

A. No sir.

Q. I will ask you to state to the Court whether or not you have

had anything to do with the importation of any fish eggs into the Philippine Islands?

A. No sir.

Q. I will ask you to state if you have ever had anything to do with the mining laws in Mindoro and Mindanao?

Sr. SALAS: I object to the question as not proper cross-examination.

The COURT: Objection sustained.

Mr. SOUTHWORTH: That is all.

299 ARCADIO ARELLANO, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DE LA ROSA:

Q. State your name?

A. Arcadio Arellano.

Q. Where do you live?

A. At No. 51 Calle San Pedro.

Q. What is your occupation?

A. Architect.

Q. Will you kindly state to the Court whether or not you at any time were a member of the Advisory Board of this city?

A. I was a member of the Advisory Board for the district of Santa Cruz.

Q. Since when and up to what date were you such member?

A. From February, 1907, to June, 1908.

Q. As such member of the Advisory Board will you kindly tell the Court whether or not you had any thing to do, directly or indirectly, with any question relating to the purchase of land made by the city, through the Municipal Board, from Judge Rohde?

A. Before the month of April, 1908, I had knowledge thru the newspapers that the Municipal Board had bought certain land in Malate for the sum of thirty-four thousand pesos.

Q. Do you know that land personally?

A. No sir.

Q. From whom did the Municipal Board purchase that land?

300 A. From Judge Rohde.

Q. Will you kindly tell the Court whether or not, at the time the Municipal Board bought that land, the Advisory Board, of which you were a member, made some investigation in regard to the matter?

A. Yes sir, the Advisory Board protested against the purchase of this land. First the amount paid for that land——

Mr. SOUTHWORTH: I object to that testimony on the ground that the protest of the Advisory Board is in writing and that that is the best evidence.

The COURT: Objection sustained.

Q. I will show you a document, marked Exhibit D. 22., and will

ask you to kindly state what that document is, and if you have ever seen it before today?

A. An extract from this document is what I have seen before, as I have just stated.

Q. You have just stated that you read in the newspapers something about this matter. Will you kindly state what you have seen in the newspapers?

Mr. SOUTHWORTH: Objected to on the ground that it is immaterial and incompetent, and on the further ground that if anything which was written in the newspapers was relevant and competent the newspapers themselves would be the best evidence, and not the recollection of this witness of what this document contains.

The COURT: Objection sustained.

Q. As member of the Advisory Board did you have knowledge of the price which was paid per square meter for that land?

301 A. Yes sir.

Q. Will you kindly state to the Court how much it was?

A. The Municipal Board paid thirty-seven centavos per square meter, instead of paying twenty-two centavos as they used to pay, that being the assessed value, and one of the reasons of the protest was precisely——

Mr. SOUTHWORTH: I object to that: "one of the reasons of the protest", as having already been ruled on by the Court.

The COURT: Objection sustained.

Q. What is your profession, Sr. Arellano?

A. Architect.

Q. Besides your profession as architect, have you any technical knowledge in regard to land surveying?

A. I am also a land surveyor.

Q. How long a time have you been a land surveyor?

A. From the year 1895.

Q. As such land surveyor have you had experience in estimating the price of land?

A. Yes sir.

Q. Can you tell us on what occasions, if you remember any, more or less?

A. I do not remember at this moment when, but my profession, as I have stated, is that of land surveyor, and I cannot remember the number of times in which I had the opportunity of calculating or estimating the value of land.

Q. Are you familiar with the value of land in the city of Manila?

302 A. Yes sir.

Q. Can you tell us if the price paid by the Municipal Board for that land was a reasonable price, or not?

A. As I have stated before, one of the reasons of the protest was on account of the ex*h*orbitant price paid for this land, and which was contrary to the regular custom of the Municipal Board.

Q. Do you mean us to deduct from this statement of yours that

the price of thirty-seven cents per square meter which was paid for that land is an exhorbitant price; is that what you mean to signify?

A. Yes sir, that is my meaning.

Q. On what do you base your opinion in making this statement?

A. Because it has been the custom of the Municipal Board whenever they bought any land to only pay for it the value at which it was assessed.

Q. Do you mean to say that the assessed value is the basis or standard with the Municipal Board, and the rate which they pay in buying land?

A. Yes sir.

Q. And do you mean to say that the Municipal Board always followed that policy in the matter of expropriations?

A. Yes sir.

Q. And do you believe that such a valuation is reasonable and just?

A. Ordinarily so.

Sr. DE LA ROSA: That is all.

Mr. SOUTHWORTH: No cross-examination.

303 VICENTE RODRIGUEZ, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. DE LA ROSA:

Q. State your name?

A. Vicente Rodriguez.

Q. Where do you live?

A. At No. 51 Calle San José, Ermita.

Q. What is your occupation?

A. Attorney at Law.

Q. Will you kindly state to the Court whether or not you were at any time a member of the Advisory Board of this city?

A. I was.

Q. Since when and up to what time?

A. From the 7th day of September, 1901, up to the 30th day of June, 1908, I was Secretary of the Advisory Board of the City of Manila.

Q. As such Secretary of the Advisory Board of the City of Manila, do you remember whether or not you had anything to do with the drafting of a document relating to the buying of some land by the Municipal Board from Judge Rohde?

A. Yes sir.

Q. I will show you a document, marked Exhibit D. 22., and will ask you to state what it is?

A. As I understand this document which I now have before me is a copy of the resolution of the Municipal Board in regard
304 to this matter of the buying of some land at Malate by the Municipal Board from Judge Rohde.

Q. Will you kindly state to the Court whether or not the Advisory Board adopted any resolution in regard to that purchase by the Municipal Board?

A. Yes sir, I remember.

Q. Do you remember, more or less, for what price that land was bought?

A. As I remember the price paid for it was thirty-seven thousand five hundred pesos for the one hundred thousand square meters of land purchased from Judge Rohde.

Q. Do you own any real estate, Sr. Rodriguez?

A. At the present time I do not.

Q. And before this time did you own any land or real estate?

A. No sir.

Q. As an attorney have you had an opportunity of intervening in the valuation of real estate?

A. No sir, because I only commenced to practice law from July of last year.

Q. Can you tell us whether or not the price paid by the Municipal Board for that land is a reasonable and just price?

Mr. SOUTHWORTH: Objected to on the ground that the witness has not shown himself qualified to testify as to the value of land in the city of Manila, and he affirmatively disqualified himself.

The COURT: Objection sustained.

305 Q. Do you remember the value at which that property was assessed?

A. I cannot answer that question.

Sr. DE LA ROSA: That is all.

Mr. SOUTHWORTH: No cross-examination.

N. M. SALEEBY, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?

A. N. M. Saleeby.

Q. Where do you live?

A. Manila, P. I.

Q. What is your occupation?

A. Physician.

Q. Will you have the kindness to state to the Court how long you have been in the country?

A. A little more than eight and a half years ago I came here.

Q. Do you know the province of Benguet?

A. I have passed through it once, but I do not know it well.

Q. Did you have an opportunity of making ethnological studies of the non-christian tribes or uncivilized tribes of the Philippine Islands?

A. Yes sir, espefially in the South.

Q. What provinces of the South?

306 A. The Moro Province.

Q. On how many occasions?

A. On many occasions. I was there five years altogether.

Q. Do you know whether or not there were any other Americans

who made similar studies in Benguet and other provinces of the Philippine Islands?

A. Yes, I know.

Q. Will you kindly mention the names of these Americans?

A. I know that Dr. Jenks made a study of the Bontoc Igorotes, and Mr. Reid studied the Negritos of Zambales, and Dr. Barrows has made a general study of the tribes of the Philippine Islands.

Q. Anyone else?

A. Dr. Miller of the Ethnological Survey has made a general study of the tribes of the Philippine Islands, and Mr. Christy of the Ethnological Survey has made a study of the Surbanos of Mindanao.

Q. Do you know whether or not these gentlemen who made these ethnological studies had any idea of civilizing these tribes, or was it merely to study them scientifically?

A. As far as I know it was simply a scientific study.

Q. Do you know whether or not any Americans went to these unexplored places for the purpose of discovering deposits of gold or other mineral wealth?

A. I have heard that there were some Americans who were prospecting for gold in various places, but they are persons whose names I do not know, neither did they interest me in any way.

307 Q. In view of what you have just stated of what you have heard, do you know whether or not such explorations were actually made, or not?

A. I am not acquainted with the subject, I do not know much about it.

Q. Do you know of any Americans who are now exploiting mines in Benguet?

A. I have heard that some people own mines in Benguet, I have read about it in the newspapers, but this is a subject which has on attraction for me, and what I know is purely hearsay, nothing else.

Q. Do you know Mr. Clarke, the candy maker of Manila?

A. I know him very well.

Q. Do you know whether or not Mr. Clarke has any mines in Benguet?

A. I know he is connection with some mines in Benguet, yes.

Q. And besides Mr. Clarke, do you know of any other Americans who have mines in Benguet?

A. I cannot name anybody, no.

Q. Have you any personal knowledge of the mines of Mr. Clarke?

A. Only what I have heard and read in the newspapers, I have never given the matter any attention, and do not know anything about this business.

Q. Did Mr. Clarke ever talk to you about his mines?

A. Yes, he wanted me to take some shares, but I had no money to invest in that way, took no interest in the matter, and did not buy any shares.

308 Q. Have you made any report of the ethnological studies made by you of the non-christian tribes, or uncivilized tribes?

A. Yes sir, I have made lengthy reports about that.
Q. Where do these reports appear?
A. Two publications have been already printed by the Government, one by the name of "Studies in Moro History, Law, and Religion", and another under the name "The History of Sulu."
Q. Is it not a fact that you scientific people are in the habit of sending your studies to the newspapers?
A. I do not know what you mean, I have never sent any of my studies to the newspapers.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Did you ever make any scientific study of the Igorotes of Benguet, and publish any result of your studies there?
A. Never, sir.
Q. Did you ever have any mining interests in Benguet, or prospect for any mining claims there for the purpose of appropriating them to your own use?
A. I have never thought of it, and never did it.
Q. Did you have any intervention in the making of laws and unmaking of laws in relation to mines in Benguet?

Sr. SALAS: I object to the question as not proper cross-examination.
The COURT: Objection sustained.
Mr. SOUTHWORTH: That is all. I will ask this question then in rebuttal.

309 W. H. CLARKE, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?
A. W. H. Clarke.
Q. Where do you live?
A. Manila, P. I.
Q. What is your business?
A. Accountant and at present Acting Auditor of the Philippine Islands.
Q. Will you be kind enough to state to the Court whether or not Commissioner Dean C. Worcester has cost the Government any expenses on account of his trips in the different provinces of the Archipelago?
A. Yes sir.
Q. Have you brought with you any statement of those expenses?
A. Yes sir.
Q. Will you kindly produce them?
A. Here they are (handing to counsel).
Q. This statement of accounts is what the trips of Mr. Dean C. Worcester cost the Government?
A. Yes sir.

Sr. SALAS: I offer in evidence these statements of accounts which have been identified by the witness, and will ask to have them marked collectively Exhibit D. 25. of the defense, and will ask permission to substitute these later on by certified copies.

310 Mr. SOUTHWORTH: Objected to as immaterial, irrelevant and incompetent.

The COURT: What is the object of this, Sr. Agoncillo?

Sr. AGONCILLO: It is for the purpose of verifying the allegation made in the article in relation to "giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of the public good, when as a matter of fact the object is to possess all the data and the key to the national wealth for his essentially personal benefit."

Mr. SOUTHWORTH: I withdraw the objection.

Q. Do you mean to state to the Court that aside from the expenses enumerated in these statements presented by you, Commissioner Dean C. Worcester has not collected any daily allowance from the Government, nor any other expense incurred during the voyages he made?

A. He was only reimbursed for the expenses shown by these vouchers.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Please state to the Court what is the total cost as shown by the vouchers about which you have testified?

A. Do you mean the net amount paid by the Government, because the disbursing officer will not pay items which we do not allow.

311 Q. What the Government actually paid is what we want to know?

A. The net expense to the Government as shown by these vouchers was P1295.33.

Mr. SOUTHWORTH: That is all.

Redirect examination by Sr. AGONCILLO:

Q. From what date did these expenses commence and up to what date do they run?

A. From December 12th, 1905, up to the present time.

Q. If I am not mistaken Mr. Worcester was Secretary of the Interior from the year 1900?

A. That may be but the act which governs these expense vouchers did not go into effect until long afterwards.

Sr. AGONCILLO: That is all.

Recross-examination by Mr. SOUTHWORTH:

Q. Did Commissioner Worcester draw any money prior to December 12th, 1905, or do these expense vouchers show all of his expenses during his term of office here?

A. We can find no record of any other.

Mr. SOUTHWORTH: That is all.

The hearing was then adjourned until January 20th, at 2.30 p. m.

312 JANUARY 20TH, 1909.

Pursuant to adjournment the case was called this p. m., with the following appearances: Mr. Southworth in behalf of the government; Srs. Agoncillo and Salas on the part of the defendant.

PABLO B. HERRERA, recalled in behalf of the defendant, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. What is your occupation?
A. Draftsman.
Q. In what office are you a draftsman?
A. Bureau of Internal Revenue.
Q. Will you kindly state to the Court whether or not you know the land that Judge Rohde sold to the municipality of Manila, situated at San Antonio de Abad, Maytubig?
A. Yes sir.
Q. How do you have that knowledge?
A. From a letter received from the Municipal Board.
Q. Have you that communication with you?
A. Yes sir; here it is (handing to counsel document marked Exhibit D. 26).
Q. What kind of land does that communication refer to as having been bought by the city from Judge Rohde?
A. It is swampy.
Q. Will you kindly tell the court how much that land was assessed at, before its sale to the Municipal Board?
313 A. At twenty centavos per square meter.
Q. How do you know that fact?
A. Because it appears in a sworn statement.
Q. Did you bring that sworn statement along with you?
A. Yes sir, here it is (handing to counsel).
Q. Whose sworn statement is this?
A. This is the sworn statement of Feliciano Macario, who was the owner of the property when it was acquired by Judge Rohde last year.
Q. What is the assessed price per square meter that appears in that sworn statement?
A. Ten cents, gold, per square meter.
Q. And for how much was that land sold to the Municipal Board per square meter?
A. Thirty seven and a half centavos per square meter.
Q. Will you kindly state to the Court, from your personal knowledge of the rule generally followed by the Municipal Board of the

city of Manila in acquiring land, what is the basis upon which they regulate the price they pay for the land?

A. That depends; as a general rule they take as a basis the assessed valuation, with the exception of some land that has been in litigation in the courts, and for which they pay more than the value at which it is assessed.

Q. But what is the general rule: are they governed by the assessed valuation, or what?

A. I do not know as to that; that depends on the municipal Board.

314 Q. Which is the general rule followed: does the Municipal Board pay as a basis for the land the value at which it is assessed, or the contrary?

A. When dealing with expropriations the assessed value is paid, with the exception, as I have stated, of some lands that have been in litigation in the courts.

Q. Do you know personally this land which Judge Rohde sold to the city?

A. Yes sir, I do.

Q. Could it be used for a park, or for building purposes, in its present condition?

A. I believe it would be necessary to fill that place up before it could be used for a park or building purposes.

Q. Can you state, in your capacity as an expert, how much it would cost to fill up that land?

A. I cannot tell you as to that, I am not an expert in such matters.

Q. Do you know the land which has been the property of Mr. Sellner, and which was sold to the Insular Government?

A. Yes sir.

Q. At what price per square meter was that land assessed before its sale to the Insular Government?

A. In the years 1901 and 1902 it was assessed at forty cents, gold, per square meter.

Q. On what do you base your statement as to that fact?

A. I believe you are trying to find out what is the assessed value per square meter?

315 Q. In the documents before you is there any sworn declaration as to that fact?

A. There is a sworn declaration here by Arcadio del Rosario.

Q. By whom is this sworn statement signed?

A. By Arcadio del Rosario.

Q. Do you know how much per square meter the Insular Government paid for that land?

A. I do not know.

Sr. AGONCILLO: I now offer in evidence the communication received from the Municipal Board which the witness has identified, and will ask leave to substitute a certified copy later on, as Exhibit D. 26.

The COURT: There being no objection you may do so.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. This land about which you have been testifying as being assessed at twenty centavos per square meter, was owned by Judge Rohde at the time of the sale to the city, was it not?

A. Yes sir.

Q. Has Judge Rohde ever had that land assessed?

A. No sir.

Q. This assessed value you speak of was placed on it by some other person who owned it prior to that time?

A. By the City Assessor and Collector.

Q. You have stated that this Sellner tract of land was assessed at eighty centavos per square meter?

316 A. I stated that the land of Mr. Sellner was assessed at forty cents, gold, per square meter.

Q. And that was in 1901 and 1902?

A. Yes sir.

Q. Has it ever been assessed since then?

A. You mean for the following years?

Q. Yes.

A. The price has gone up.

Q. Now this assessment of forty cents, gold, per square meter: was that for the whole tract of land, or only for the part which the Government bought?

A. For the whole tract.

Q. Is it not a fact that in that tract of land there was much low land of less value than the other parts of it?

A. No, there was not.

Q. But in the same tract of land was there not some parts of it low and of less value than other parts of it which was high?

A. Yes sir.

Q. Now is it not a fact, that part of this land which was bought by the Government was high land which was situated on Calle Herran?

A. The part close to the Exposition Grounds.

Q. Did it front on the proposed new boulevard?

A. That is Calle K.

Q. A part of it was right near Calle Herran, was it not?

A. Yes sir.

Q. What was similar land assessed for on Calle Herran?

317 Sr. AGONCILLO: Objected to as immaterial.

The COURT: Proceed.

A. I cannot answer that question now, as I have not got here the map which shows the other parcels of land.

Q. You are an employee of the City Assessor's Office, are you not?

A. Yes sir.

Q. Do you know whether or not the City Assessor was called upon to make a statement as to the value of this land before it was purchased?

A. I do not know anything about that.

Q. You never saw any communication of that kind?
A. I have not.

Mr. SOUTHWORTH: That is all.

MATEO CARANTES, called in behalf of the defendant, being duly sworn, testified as follows:

(The testimony of this witness was given in Ilocano, interpreted into Spanish by Sr. Narciso Rangel, who was duly sworn, and from Spanish to English by the court interpreter.)

Direct examination by Sr. SALAS:

Q. State your name?
A. Mateo Carantes.
Q. Where do you live?
A. At Baguio.
Q. What is your occupation?
A. Farmer and merchant.
Q. In what part of Baguio do you live?
A. Barrio of Loakan.
318 Q. Do you know whether or not Commissioner Worcester owns any land in that barrio?
A. It is said that he does.

Mr. SOUTHWORTH: I object to that and ask that it be excluded.
The COURT: Proceed.

Q. Do you know personally yourself the land which Commissioner Worcester possesses at Loakan?

Mr. SOUTHWORTH: Objected to because the witness has not stated that Commissioner Worcester has any land there.
The COURT: Objection sustained.

Q. Will you kindly state to the Court whether or not you know personally that Commissioner Worcester possesses any land at Loakan?
A. I know that he has land at Loakan, because Erastus (sic) Worcester says that is their land.

Mr. SOUTHWORTH: I object to the statement that Erastus Worcester said that was their land.
The COURT: That is the same as saying that he does not know himself, put in a different way, that is all.

Q. Do you know that land personally?
A. Yes, I know it personally, because I was told by Mr. Erastus Worcester, because when my cattle got mixed up with the cattle of Mr. Erastus Worcester, they got angry and excluded my cattle from theirs.
Q. Have you got a primary knowledge of any part of that land?
A. Yes, because part of it is my land.
319 Q. Will you kindly explain what you mean by saying "part of it is my land"?

A. Yes, part of this land is ours, but because they say that a part of it is theirs we have no objection.

Q. Do you mean to say that part of your land at Loakan has been included in and made a part of the hacienda of Mr. Worcester?

A. Yes, part is included in the hacienda of Mr. Worcester, and part is included in the land of the Government, and part of it is a military reservation.

Q. Did Commissioner Worcester buy from you that part which has been included in his hacienda?

A. No sir, why should I sell it.

Q. Who occupies it at the present time?

A. At present nobody.

Q. Then why do you say it has been included in the land of Commissioner Worcester?

A. Because when his nephew was there they said that the land was theirs, and even up to the present time they say it is theirs.

Q. Do you know of any other part of that land which is said to belong to Commissioner Worcester?

A. No sir, that is all I know.

Q. What is the extent or area of that land of yours which has been included in the hacienda of Commissioner Worcester?

A. Supposing that palay were planted, there would be a crop of a hundred cavanes, but if sweet potatoes were planted there would be plenty.

320 Q. Do you know whether or not Commissioner Worcester has got horses and cattle, goats and turkeys on that land?

A. Yes, there are turkeys and goats, horses and cattle there.

Q. Under whose charge are these animals on that land at Loakan?

A. Do you mean now, or before?

Q. State in whose charge they were before, and under whose control they are now?

A. Before there were many Igorots taking care of them, one of whom was a neighbor of mine in that barrio, but I don't know his name.

Q. Do you know the road at Benguet which has been constructed at the expense of the Government?

A. I know it.

Q. Will you kindly state to the Court the condition of that road with reference to the land of Commissioner Worcester at Loakan?

A. The land of Commissioner Worcester is along side the street.

Q. Do you mean to say that that land has been constructed by the Government?

A. Yes, because it is said that that road has been constructed by government money.

Q. How many roads have been opened there at the cost of the Government, if you remember?

A. The first road made is near my house but they did not finish that one; then they made another road which runs alongside

321 the land of Commissioner Worcester.

Q. That road which went near your house, which was not finished, does it go near or by the land of Commissioner Worcester?

A. Yes, it goes by, that is the boundary line.

Q. Which of the two took place first, the acquisition of this land by Commissioner Worcester or the opening of that road?

A. It was at the same time.

Q. Do you know whether or not there are any mines on the land of Commissioner Worcester at Loakan?

A. I do not think so, but I saw an excavation there.

Q. And by the external appearance of that excavation there, for what purpose is it used, do you think?

A. It is said that there are some mines there, but for my part I cannot state.

Q. Do you know whether or not any Americans made explorations for mines at Benguet?

A. I know of many, but I do not know their names.

Q. Can you remember one or two names?

A. I know two names.

Q. Kindly state them to the Court?

A. There are three that I know, but I only know their names, not their surnames.

Q. Please state their names?

A. Cahill, Ansen, and the third is Amid. (Meade?)

Q. Do you know whether or not an American by the name of Clarke has any mines at Benguet?

A. Yes, I know Lark. (Sic)

322 Q. Have you seen Mr. Clarke making explorations at Benguet, before he had those mines there?

A. I have no knowledge whether Mr. Lark had any mines at Benguet.

Q. Who is that man you mention by the name of "Lark"?

A. Yes I know that Mr. Lark has a mining claim at a place called Antimok, jurisdiction of Itaugan.

Q. So you mean to say that you know of the mining claim that gentleman had there?

A. Yes, because it was said that he owned mines at Antimok.

Q. Who said that?

A. The counselman of Antimok, because it was said that he is the one who paid for their labor, and because he was the one who constructed houses there of lumber.

Q. Do you know whether or not there was any other land which has been included in this hacienda of Commissioner Worcester at Loakan?

A. No sir, that is the only land I know.

Q. Do you know the Igorotes that reside there, surrounding Loakan?

A. Yes sir, I know my neighbors.

Q. Can you mention the names of some of those you know?

A. Yes sir.

Q. Please mention them?

A. Tagre is one.

Q. Anyone else?

A. Pinquesan, Kadji and Paquel, who is a widower.

323 Q. Have these Igorotes mentioned by you also got land at Loakan?

A. Yes sir.

Q. And where is their land now?

A. It is there at Loakan, but part of it is included in land of the Government, and part is a military reservation.

Q. Is that all?

A. That is all.

Q. Is not some of it included in the land of Commissioner Worcester?

Mr. SOUTHWORTH: Objected to as leading.

The COURT: Objection sustained.

Sr. AGONCILLO: But I must lead this witness.

The COURT: There is no necessity, he seems intelligent enough.

Sr. AGONCILLO: Exception.

Q. Please state to the Court whether or not you know in whose possession is the land of these Igorotes?

A. It is at Loakan, and near the hacienda of Mr. Worcester.

Q. Who possesses the land of these Igorotes you have mentioned at the present time?

A. They cultivate their land now, but they made a complaint to the Supreme Court here, and asked Sr. Balpiedad to measure their land.

Q. Against whom are they complaining?

A. Against nobody, we filed a motion with the Attorney General, and asked the Supreme Court for protection, because we are
324 afraid, and we are waiting now for the result of that.

Q. Against whom are you afraid?

A. Of Mr. Commissioner and Mr. Governor.

Q. Who is that Mr. Commissioner?

A. Mr. Worcester.

Q. And why are you afraid of him?

A. Because we are ignorant people and do not know anything, and as an evidence of that the land of Mateo Carreño has been expropriated by the Government.

Q. Do you also mean by that those Igorotes had land which was taken by somebody else?

A. It is said that the barrio we occupy is intended for a military reservation.

Q. And only by a military reservation?

A. Part of the land of we five men has been occupied by Mr. Governor, and part by the military reservation.

Q. Who is that Mr. Governor you refer to?

A. Governor Pack, because we spoke to him before and Governor Pack told me that he could not help it, that this was to be a military reservation.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. How long has it been since that land you refer to as said to belong to Commissioner Worcester and his nephew has been occupied?

A. More than three years, but by the military people over one year.

Q. Did Commissioner Worcester ever live upon that land?

325 A. He did not reside there, but he went there on three occasions to my knowledge.

Q. Did Commissioner Worcester ever tell you that he owned that land?

A. Commissioner Worcester did not tell me, but his nephew.

Q. Then all you know about the ownership of that land is what Commissioner Worcester's nephew told you, is it?

A. Yes sir.

Q. When was that road to which you have referred as having been built at the expense of the government, built to Loakan?

A. When they built that road that leads there.

Q. But when did they build that road that leads there?

A. It is four years ago I believe.

Q. Is it not a fact that that road was built there in 1901?

A. No.

Q. What year was it?

A. When they started to build that road it was seven years ago.

Q. Well did the road go to Loakan seven years ago?

A. When they started they commenced to work at Baguio and Doan.

Q. When did Commissioner Worcester's nephew go to Benguet?

A. It was four years ago.

Q. Now is it not a fact that that road was there at Loakan

326 before Commissioner Worcester's nephew came to Benguet?

A. Just at the time the road reached Loakan at that time arrived also the nephew of Commissioner Worcester.

Q. The road and Commissioner Worcester's nephew came there the same day?

A. When they were building the road at Loakan then arrived the nephew of Commissioner Worcester, and the house occupied by Mr. Worcester's nephew is almost between the road from the commissary of the workmen to the end of the road.

Q. Now at the time that commissary was situated there, where were the workmen who were engaged in building the road working at that time, at Loakan or some other place?

A. On the same road that exists now, opposite the land of Mr. Worcester.

Mr. SOUTHWORTH: That is all.

Redirect examination by Sr. SALAS:

Q. You say you have seen Commissioner Worcester's nephew arrive; what occupation did he have then?

A. Yes I know, because he was taking care of the cattle, horses,

turkeys and goats, along with some Igorotes, and he ordered the planting of a little piece of land for the purpose of growing sweet potatoes and beringals.

Q. To whom did the animals belong which were under the care of the nephew of Commissioner Worcester?

327 Mr. SOUTHWORTH: Objected to as not re-examination, and the witness testified on that point in the original examination.

The COURT: Objection sustained.

Sr. SALAS: That is all.

LUCIO ALMASAN, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?
A. Lucio Almasan.
Q. Where do you live?
A. At Baguio, Benguet.
Q. What is your occupation?
A. Deputy Clerk of the Court of First Instance of Benguet.
Q. How old are you?
A. Twenty-eight years of age.
Q. Do you know if Commissioner Worcester has some property at Benguet?
A. He has only one lot.
Q. Where?
A. At Baguio.
Q. Do you know that land personally?
A. I have not seen that land, but it is said to be his.
Q. Who told you?
A. It is notorious and public, a well known fact.
328 Q. Did you not say you lived at Baguio?
A. Yes sir.
Q. And that lot is at Baguio?
A. It is in Baguio, but it is distant from my house.
Q. What is on that lot?
A. A house belonging to Mr. Worcester.
Q. Have you seen the house?
A. It could be seen from the road, but I did not go personally to see the house.
Q. But you saw the house from a distance?
A. Yes sir.
Q. How do you know that the house belonged to Commissioner Worcester?
A. As I have stated it is notorious and public that he is the owner.
Q. During the summer when the Commission go there have you seen Commissioner Worcester there at any time?
A. Yes sir, I went there to greet him with my subordinates.
Q. In what house did you greet Commissioner Worcester?

A. If I am not mistaken in the public building, the government building, at Baguio.

Q. Have you at any time during the summer seen Commissioner Worcester in the house you refer to now?

A. No sir.

Q. Do you know whether or not any Americans went to Benguet for the purpose of studying the mining possibilities?

A. For studying the mines, no, but I know of some who came to me, as Justice of the Peace, and stated that they had been
329 able to locate some gold mines.

Q. Do you mean to say that it appeared in their sworn statements or declarations, that they had made explorations of mines?

A. Some of them stated that they had made explorations, and some of them stated they had just located.

Q. Was this under oath?

A. Yes sir.

Q. Do you remember the names of any of these Americans?

A. Mr. Clarke was one, and there were others whose names I do not remember at this moment.

Q. Do you remember whether Dr. Bayer made a sworn statement before you?

A. Yes sir.

Q. And a man by the name of Robinson?

A. Yes sir.

Q. And a man named Whitmarsh?

A. Yes sir.

Q. Do you know if they, or any other American, made studies in regard to the Igorots?

A. No sir, I did not have any reason to know it.

Q. Do you know the public road constructed by the Government at Benguet?

A. Yes sir.

Q. Do you know if one of the places through which the road goes is called the barrio of Loakan?

A. I was unable to go to this place.

330 Q. Will you kindly state where Loakan is: is it between Benguet and Manila?

A. It is east of the road coming to Manila.

Q. Does it pass in front of that barrio?

A. A little distant.

Q. How many meters distant is Loakan from the road from Benguet to Manila?

A. I cannot state exactly.

Q. Is there any barrio between the road and Loakan?

A. I cannot tell at this moment, I do not remember, I am not familiar with it.

Q. Please state if the road crosses the barrio of Loakan, or not?

A. As I have stated I was unable to go to that barrio, and cannot tell.

Q. Do you know that barrio?

A. As I have stated I was unable to go there.
Q. Did you go by the road from Baguio to Manila when you came here?
A. Yes sir, but it was distant.
Q. But did you come here by that road?
A. By the road that leads to Manila.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. The lot to which you have referred, on which you state Commissioner Worcester has a house, is a lot in the town site of Baguio, is it not?
331 A. I do not know the name of that place.
Q. Is it a house in which he sometimes stays in summer, when he goes up there to attend the meetings of the Commission?
A. I do not know whether Commissioner Worcester lived in that house or not.
Q. You know where the town site of Baguio is, do you not?
A. I know the townsite because I live there, and the house of Commissioner Worcester is a little distant from the government building.
Q. Is this house of which you speak at Baguio, or is it at Loakan?
A. At Baguio.

Mr. SOUTHWORTH: That is all.

VICENTE BALPIEDAD, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?
A. Vicente Balpiedad.
Q. Where do you live?
A. At Baguio.
Q. What is your occupation?
A. Proprietor, exploiter of mines, and land surveyor.
Q. I will hand you a document, marked Exhibit D. 19, and will ask you to state if you know the land which is described in this document?
332 A. Yes sir.
Q. How do you happen to know it?
A. Because I have seen it fixed to some of the posts on the military reservation, that is the notice I mean.
Q. What is your present occupation at Benguet?
A. I have no occupation.
Q. Who is the land surveyor at the present time at Benguet?
A. The land surveyor is appointed by the Government.
Q. Are you a land surveyor, or not?
A. Yes sir.
Q. Aside from yourself is there any other land surveyer in Benguet at the present time?

A. Yes sir, the land surveyor appointed by the Government.
Q. Did you become familiar with this paper which you state you have seen on some of the posts of the military reservation?
A. Yes sir, on account of having read the same.
Q. On the first page of this paper, beginning with the sixth line from the bottom of the page it says "Estacion de Triangulacion de la Hacienda de Worcester?"
A. Yes sir.
Q. Do you know that hacienda or land?
A. Yes sir.
Q. To whom does that land belong?
A. As I understand to the Commissioner.
Q. What Commissioner?
A. Commissioner Worcester.
333 Q. Who occupies that land at the present time?
A. Part belongs to the Igorotes of the barrio of Loakan.
Q. And part?
A. And part, as is stated in this paper, in the hacienda of Commissioner Worcester.
Q. Do you know this land personally?
A. Yes sir.
Q. On what do you base your statement that that land at Loakan is the property of Commissioner Worcester?
A. On account of my business as a land surveyor and furthermore I was convinced on account of this notification.
Q. Have you any other reasons for stating that this land is the property of Commissioner Worcester?
A. Only according to the general belief that there was no one else but Commissioner Worcester.
Q. Do you know whether or not Commissioner Worcester has any other land at Benguet?
A. Yes sir.
Q. Where?
A. Besides this hacienda he has a lot on which he constructed his house.
Q. Do you know personally that lot and that house?
A. Yes sir.
Q. How do you know that house and lot belongs to Commissioner Worcester?
A. Because I went over that land.
Q. Is that the only reason you have for stating that it belongs to Commissioner Worcester?
334 A. Yes, on account of my business as a land surveyor, and also from what I read in this notification which was posted up, Exhibit D. 19.
Q. Do you know by what means Commissioner Worcester acquired that land?
A. No sir, I only know from what I read in this notification Exhibit D. 19.
Q. I refer to the lot at Baguio?
A. In regard to the lot at Baguio, according to public notice it

was sold at public auction in Baguio, and it may be that Commissioner Worcester bought it at public auction.

Q. Do you know the road at Benguet which was constructed by the Government?

A. Yes sir.

Q. Does that road go through Loakan?

A. The old road goes through Loakan, yes.

Q. I refer to the road constructed by the government?

A. The old road was also constructed by the government.

Q. Are there two roads there which have been constructed by the government?

A. From what I know there are two roads constructed by the new road which is finished

Q. Do these two roads go through the land of Commissioner Worcester at Loakan?

A. Yes, through the hacienda.

Q. Do you know whether or not there are any mining excavations on the land of Commissioner Worcester at Loakan?

335 A. The only time I went there to that barrio I saw an excavation which looked like the excavation for a mine.

Q. What knowledge or experience have you got as to mining excavations?

A. I have experience as a proprietor of mines.

Q. For how long a time have you been a proprietor of mines?

A. For more than a year.

Q. Are you prospecting for mines at the present time and exploiting them?

A. Yes sir, in accordance with the mining laws.

Q. And from your experience as a mining man are you sure that the excavation you saw at Loakan on the land of Commissioner Worcester is a mining excavation?

A. Yes, from seeing it I should say it was a mining excavation.

Q. Do you know if any other Americans made explorations for the discovery of mines at Benguet?

A. Yes, several, and some of them took oath before me as a notary.

Q. Did you have occasion to know personally anything in regard to these mines, or these Americans?

A. Yes, because I have been in some of these places.

Q. Do you remember the names of some of these Americans who took oath before you, or that you know have mining claims at the present time?

A. Yes, the neighbors to the claim which I located.

Q. Do you know Mr. Clarke of Manila as one of the mine

336 owners of Benguet?

A. Yes sir.

Q. Have you ever seen at any time Commissioner Worcester in company with Mr. Clarke making explorations for the discovery of mines.

A. I have not had the opportunity of seeing them together, and do not know whether they went together or not.

Q. Do you know whether or not Commissioner Worcester made explorations for the discovery of mines there by himself, or accompanied by others who were not Mr. Clarke?

A. No, I do not.

Q. Do you know of any Americans who made studies in regard to the Igorotes?

A. No sir, I do not.

Q. Did you know the nephew of Commissioner Worcester when he went to Benguet?

A. Yes sir, I had a talk with him twice.

Q. What was his occupation or profession when he arrived at Benguet?

A. As a private citizen, nothing particular.

Q. I mean to say to what did he devote himself?

A. From what I have seen he devoted himself to the lumber business, the hauling of logs with horses.

Q. Do you mean to say that he was a teamster?

A. No sir.

Q. Did he himself hold the lines and drive the horses that were hauling the logs?

337 A. What I saw was not in bull carts, but was being hauled by horses which he drove, and sometimes I saw him in company with some Igorots with bull carts.

Q. Do you know whether or not there are cattle on the land at Loakan the property of Commissioner Worcester?

A. No sir, I do not.

Sr. SALAS: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. Do you know where the nephew of Commissioner Worcester lived when he was in Benguet?

A. No sir, I am not familiar as to that.

Q. Do you know the land which he occupied while he was there?

A. No sir.

Q. Do you know about where it was?

A. No sir, I am not familiar as to that.

Q. Do you know that he lived at or near Loakan?

A. No sir, from what I know he lived in Baguio, in some house there.

Q. Where did you find this notification on the posts of which you speak?

A. On the posts of the military reservation and the Igorotes also asked me to go there and inform them what it was.

Q. And all you say on this piece of paper was "Hacienda de Worcester" and you conclude from that that refers to a hacienda owned by Commissioner Worcester at Loakan?

338 A. Yes, I went through, because there is a road to go there. the new road.

Q. Did you ever see Commissioner Worcester on that piece of property?

A. No sir.

Q. Did Commissioner Worcester ever tell you that he owned that property?

A. No sir, but of my own knowledge, on becoming familiar with this notification, I believed it belonged to Mr. Worcester.

Q. Does that notice say that that land belonged to Commissioner Worcester?

A. No sir, but the name of Worcester is of common occurrence in the newspapers, and also in the provinces, and there was no other commonly known by that name but the Commissioner.

Q. Was not the name of the nephew of Commissioner Worcester also Worcester?

A. Yes sir.

Q. And did he not occupy some land about Baguio?

A. I am familiar as to that.

Q. Did you ever see any deed to that property to Commissioner Worcester?

A. No sir, nothing except this notification.

Q. Were you present when he bought that land from anybody?

339 A. I am not familiar as to that, I only know on account of this notification that this is notorious and public in Baguio, and not only the barrio itself but all the Igorot neighbors surrounding the barrio of Loakan know that it belonged to Commissioner Worcester.

Q. Well the only knowledge you have of Commissioner Worcester's ownership of that land is what you have heard, and from the notice you saw on the posts of the military reservation, is it not?

A. Not only that, but I remember now that the nephew of Commissioner Worcester, whose name is Worcester, also, from the social position which I saw that he had there was not capable of possessing a hacienda, as I saw him there hauling logs and I am of the opinion that the nephew was only in charge of Commissioner Worcester's hacienda, unless he inherited some money from a wealth- relative in America which would have enabled him to purchase that hacienda.

Q. Did anybody purchase that hacienda?

A. In my opinion Commissioner Worcester is trying to buy it from the Government, but as yet it is not Commissioner Worcester's, because there has not been any notice published, so it is not possible that Commissioner Worcester with the office of Secretary of the Interior could have bought the hacienda.

Q. How do you know that Commissioner Worcester was intending to buy that hacienda?

340 A. Maybe some time when he became a private citizen.

Q. How do you know he intended to buy it some time when he became a private citizen?

A. Because I so heard the name Worcester, and in my opinion it is impossible that his nephew could buy it.

Q. Has anybody bought it?

A. Nobody.

Q. Now you have stated to the Court that that hacienda belonged to Commissioner Worcester?

The COURT: He has not said so, but you are going to get him to say so pretty soon. He has stated two or three times that he formed his opinion from this notice which was posted on the military reservation and from what he had heard.

Q. You spoke about having seen a hole dug in the ground or in the hill on this hacienda?

A. Yes sir.

Q. Do you know when that hole was dug there?

A. I have seen it only.

Q. Do you know who dug that hole there?

A. No sir, I have not seen the one who did the work.

Mr. SOUTHWORTH: That is all.

Redirect examination by Sr. SALAS:

Q. Who cultivates at the present time the land you have stated you believed to belong to Commissioner Worcester?

A. As I understand this hacienda is of great extent, and part of this hacienda is cultivated by the Igorotes.

341 Q. And part?

A. A part is not cultivated, no work done on it.

Q. Do you know with whom these Igorotes have dealings on that land which you say they are cultivating now: who authorizes them to cultivate it?

A. Nobody, before I had heard that that hacienda belonged to Commissioner Worcester the Igorots were cultivating it, long before that.

Q. Who has charge of that hacienda at the present time?

A. I do not know.

Sr. SALAS: That is all.

CARLOS AMBAS, called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. SALAS:

Q. State your name?

A. Carlos Ambas.

Q. Where do you live?

A. In the barrio of Benguet.

Q. What is your occupation?

A. Boss of Igorot workmen.

Q. Do you know whether or not Commissioner Worcester possesses any land at Benguet?

A. No sir.

Q. Do you know of any lot near the Baguio hospital?

A. Yes sir.

Q. To whom does that lot belong?

A. I know that land belonged to some Igorot.

342 Q. And does not Commissioner Worcester have some land there?

Mr. SOUTHWORTH: Objected to as leading.
The COURT: Objection sustained.

Q. Do you know of any Americans who went to Benguet for the purpose of making studies of the Igorots?
A. Yes sir.
Q. How many times have you seen that?
A. Once.
Q. What did these Americans do there?
A. They were measuring the heads and the height of the Igorots.
Q. Do you remember who these Americans were, if you know any of them?
A. I do not know any one of them.
Q. But you say there were several Americans?
A. I know there was one.
Q. Do you know if any Americans made explorations for the purpose of locating some mining claims in Benguet?
A. Yes sir.
Q. How many times have you seen that?
A. From 1905 until now.
Q. Do you know any of these Americans?
A. Yes sir.
Q. Will you kindly mention the names of those you remember?
A. Mr. George B. Meade is one of them.
Q. Who else?
A. And Dr. Bayer.
343 Q. Any more?
A. Mr. Whitmarsh, Mr. Shea, Mr. Ide, Mr. Pitt, and that is all.
Q. And did Mr. Hanson go there?
A. Yes, also Mr. Hanson.
Q. Do you know the places which were the object matter of their explorations?
A. Of course they went over the mountains to prospect for veins of ore, and sometimes they happened to find veins of ore.

Sr. SALAS: That is all.
Mr. SOUTHWORTH: No cross-examination.

TEODORO M. KALAW, called in his own behalf, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?
A. Teodoro M. Kalaw.
Q. Where do you live?
A. At No. 547 Calle Paz.
Q. What is your occupation?
A. Director of the newspaper "El Renacimiento".
Q. Will you kindly state to the Court whether or not you were director of the newspaper "El Renacimiento" on the 30th day of October, 1908?

A. I was the director on that date.

Q. And prior to that time were you also director of that newspaper?

344 A. I commenced to be director of that newspaper on the 16th of October of the year before last, and I continued to be so until I went to a foreign country, and when I returned from that foreign country I resumed my duties with "El Renacimiento" as director and have been so engaged up to the present time.

Q. Can you state the date when you went to the foreign country and for a time ceased to be director of "El Renacimiento"?

A. I believe it was the end of May of last year.

Q. Will you kindly state to the Court when you resumed your duties as editor of "El Renacimiento"?

A. I remember it was one of the first days of September of last year.

Q. Will you kindly state to the court what your duties are as director of "El Renacimiento"?

A. The duties of the director of a newspaper organized in accordance with the custom established in Filipino journalism, and consequently my duties as director of "El Renacimiento", are to distribute the work of the day among the editors and reporters of the newspaper, to watch and inspect all said work, to correct it, and afterwards to send it to the printers for publication. It is also a principal part of the duties of the director to revise and correct the proof, which is ordinarily done in the afternoon.

Q. Have you got knowledge of the editorial which is the subject matter of the complaint in this action against you?

A. Yes sir.

345 Q. Can you state to the court who published this editorial which is the subject matter of this complaint?

A. I published it as director.

Q. So you are the only one responsible for that editorial?

A. Yes sir, as director of the newspaper.

Q. And no other person is responsible for that editorial?

A. Nobody else is responsible for it.

Q. Will you kindly explain to the Court the end, the intention, the purpose or motive which induced you in the publication of this editorial?

A. The end, motive and intention which induced me to publish that editorial, which is considered libelous, is the same end, the same motives and intention which has always actuated us in the publication of "El Renacimiento" from its inception, and we have on all occasions, when it seemed called for, published similar articles containing the campaign which we have always made against that cloud of exploiters who come to the Philippine Islands to aggrandize themselves, and taking advantage of the ignorance of the poor Filipinos by degrees take their land away from them. This has always been our campaign, a campaign of defending the dignity and integrity of the Filipino people, from the first time the newspaper was started, and it is a well known fact that this newspaper was founded exclusively for that purpose and with that object. I

will have to explain some considerations in regard to this
346 editorial which is supposed to be libelous, and which are as follows: The editorial which had the title "Birds of Prey" has the same particularity as has all the articles of a similar tendency which we have published in "El Renacimiento", that of being a kind of recapitulation of all the campaigns, of all the articles, which have been published in "El Renacimiento" against all foreigners who come to the country who were considered dangerous to our political ideal, and especially to our economic integrity. And besides that the article has the particularity of being a recompilation, a kind of synthesis of all our campaigns, and therefore refers to all these exploiters of land in a symbolic form, an emblematic form or an allegoric form, and it was not only the intention of the writer in adopting this allegoric form to espouse the cause of the Filipino people but of all other lands of the earth who are similarly imperilled, as is shown by the heraldic symbols of many of the powerful nations of the earth. That is the idea of the writer of this article.

Q. Will you kindly explain the good motives which induced you to publish this editorial?

A. The motives which induced me in the publication of that editorial are multiplex and diverse. Each one of the facts mentioned in that editorial have been related in many articles and news
items published in "El Renacimiento" and other newspapers,
347 and all of the facts mentioned in that editorial, before its publication, had created a kind of current of opinion, an atmosphere which existed on the horizon of the Filipino people, as for instance, concreting the facts, the fact that referred to the slaughtering of cattle was a fact known and discussed in all places of the city, discussed by all citizens of Manila and the general subject matter of conversation on that day all over the city, and that was taken into consideration before publishing the article. And in the same way as this fact of the cattle being slaughtered could be considered the many other facts mentioned in the article, such as for example the exploitation of Mindoro and Mindanao and other provinces of the Archipelago, which was the subject matter of many articles published especially in "El Renacimiento" and which facts were gathered from different parts of the Archipelago by our correspondents and special editors. And if you want me to concrete the fact more, I remember well that there appeared in "El Renacimiento" a series of articles tending to combat American exploitation in Mindanao, signed by a well know Filipino writer or by several Filipino writers, all of which induced a Filipino Assemblyman to present a project of a resolution which would make these territories an object for legislation in the Assembly. Returning to the question of the cattle, I remember now that one of the reasons which
brought this slaughtering of sick cattle in the Bay into such
348 prominence was the existence of cholera in the city, and the supposition that it might have been partly caused by the eating of this infected meat in this vicinity. I might be able to make

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similar declarations in relation to the other facts mentioned in this article, which at this moment I do not remember.

Q. Will you inform us what were the sources of information upon which you based the statements used in that editorial, fact by fact?

A. I have already stated that all the facts mentioned in the editorial were preceded by a formidable current of opinion of a tenacious collective spirit, and, talking in general, that was what induced the writing of this document. I cannot state specifically just from whom we received information of these facts because that would be to remember an infinity of persons who on different occasions write in my office without informing me personally of these facts, or who send in their communications.

Q. Was it your intention in the publication of this editorial to refer to a determinate person or to several persons?

A. I believe the answer to that question could be deduced from the editorial itself. If our intention had been to refer exclusively and individually to a determinate person, we would have had the courage to place the name of that person in the columns of our newspaper, as we have done on several occasions, as will be remembered, when we have made campaigns against public
349 officials, and everyone knows of the campaign we made against Colonel Baker at Cavite. In all these campaigns, whenever we desired to combat against a public official for being bad, we never hesitated for a moment to point the finger to this official, and to assume the responsibility therefor. The intention, therefore, is to cut out the abuses of the administration, and of the individuals who lower the dignity of the Filipino people and their territory, defending as a consequence the cause of the people, and which we promised to defend upon establishing this newspaper "El Renacimiento."

Q. So the campaign of "El Renacimiento", as well as the editorial which is the object of this suit, had not reference for its principal object to persons or particulars, but referred to the abuses committed by officials in general: is that not so?

A. Yes, ordinarily we journalists when we are in possession of many facts, of many abuses committed by many persons, adopt in our writings a general style, allegoric, symbolic. Furthermore in this editorial, besides referring to a fact which is exclusively local, we desire to defend the cause of the *cause of the* Filipino people, and not only that but defend the cause of all subject peoples, and this is shown here by enumerating the heraldic symbols of many powerful nations, who are in possession of territories of a subject race.

350 Q. But the facts that are mentioned in that editorial were preceded by information?

A. Yes sir.

Q. Will you kindly explain what this information was, the nature of it?

A. To explain the news items which we have received would necessitate my going over the files of "El Renacimiento" and read-

ing all the articles and items of news published in relation to this point, but I believe it is a matter of public knowledge, and especially among the readers of "El Renacimiento", that we have always made campaigns against each and every one of the abuses mentioned in this article.

Q. Before the publication of that article, for instance, did you seek information from the President of the Municipal Board in respect to this slaughtering of cattle in the Bay of Manila?

A. Referring to that fact especially, I remember very well that on the day when the "Cablenews-American" published the information in regard to this point, that immediately after reading the information in the "Cablenews-American" I gave directions to the redactor jefe of "El Renacimiento" to inform Alcalde Roxas of this news in the Cablenews-American by telephone and to ask him if it was exact and correct, and if we could reproduce it as exact, and the Alcalde Roxas replied that it was exact and that we could publish it, and so we published it.

351 Q. Will you kindly state to the Court whether or not you have held, or now hold, any animosity or ill feeling against the "acusador privado" Commissioner Dean C. Worcester?

A. I sincerely confess that I have had no occasion of knowing Commissioner Worcester except on one occasion when I was redactor jefe of "El Renacimiento", when I went to his office, I do not know whether I was called by him or what, to talk about some information we had about the cholera. Commissioner Worcester received me very well, and I received from him other information in relation to that disease which was at that time in Manila. Then on the next day Commissioner Worcester wrote us a letter ordering us to rectify a fact which he said he had not stated to me in our conference, but as I had taken notes at the time he made his statements, I refused to make the rectification, as I considered it as a fact which he had told me. I do not remember of having had anything to do with Commissioner Worcester after that.

Q. Do you remember about what the fact was that Commissioner Worcester wanted you to rectify?

A. This happened three or four years ago, and as a matter of fact I do not remember now about what it was.

Q. Have you had a conversation with Commissioner Worcester about the campaign which "El Renacimiento" was making over these matters which affected the general welfare of the country?

352 A. Besides the conversation I have just stated I do not remember of any other.

Q. What is the principal end and purpose as pursued in that editorial?

A. I have already stated that the principal object was to cut off abuses, to point them out to the people and to the Government, to have an honest, clean and liberal administration, one which would be satisfactory to the governed Filipinos, to whom American has promised that they should be liberated some day and that they should be led to prosperity.

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Q. Do you mean to say by this that the intention was to promote the general welfare of the country?

A. Yes sir, to promote the general welfare of the country and cultivate a better understanding between Americans and Filipinos by means of an exposition of the complaints of the people before the American Government and before the authorities.

Q. And in your capacity as director of "El Renacimiento" can you state positively that this was the primordial and principal object of "El Renacimiento" in the publication of that editorial?

A. Yes sir, that is the principal motive.

Q. There was no other end but that?

A. No sir, no other.

Sr. AGONCILLO: That is all.

Cross-examination by Mr. SOUTHWORTH:

Q. You have stated, I believe, that this slaughtering of
353 diseased cattle was generally and publicly discussed about the time that it occurred?

A. Yes sir.

Q. Well in those discussions who was held responsible for the slaughtering of these cattle in the Bay?

A. It was not spoken on that occasion of any responsibility at all, it was not determined who was the responsible party, it was only said that it was the American authorities.

Q. You have stated to the Court that you heard a general discussion about the slaughtering of these cattle in the Bay, and you did not hear the name of Commissioner Worcester mentioned in connection with it?

A. Yes sir, I heard the name of Commissioner Worcester mentioned, and also the name of the Director of Agriculture, and others, and the public even pointed personally to these officials as responsible for that act, but as we did not have on hand evident proof to really show the responsibility of these officials, we preferred to and did adopt the general form in the article, so as to include all public officials.

Q. Then you did not hear Commissioner Worcester held responsible for the slaughtering of these cattle in the Bay by anyone, in these discussions you heard?

A. I did not say that.

Q. Then I ask you the question, as to whether or not in these public discussions that you heard in relation to this matter of the slaughtering of these cattle in the Bay, you heard Commissioner Worcester held responsible for it?

354 Sr. AGONCILLO: This has already been answered, I object to the question.

The COURT: Let him answer again.

Sr. AGONCILLO: Exception.

A. As I have stated there was pointed out Commissioner Worcester, the Director of the Bureau of Agriculture and other officials.

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Q. Who were those other officials?

A. I do not remember who they were.

Q. Then you had heard Mr. Worcester held responsible for this slaughtering of cattle in the Bay?

A. It made him one of the responsible parties.

Q. Now I believe you have stated that the purpose of this editorial was to correct abuses by officials and individuals in regard to the matters about which this editorial was written?

A. Yes sir.

Q. Did you know of any official who had committed any abuse in regard to these cattle which were slaughtered in the Bay?

A. I have not concreted my former declaration to the act of the slaughtering of the cattle.

Q. Just answer my question. I asked you if you knew of any officials who were responsible for abuse in regard to these cattle which were slaughtered in the Bay?

Sr. AGONCILLO: I object to the question as not proper cross-examination, because from the simple reading of this paragraph it
355 can be seen that it has not been determined that any person was responsible for it.

The COURT: Objection overruled, the witness may answer.

Sr. AGONCILLO: Exception.

A. As I have stated already it was pointed out that Commissioner Worcester, Dr. Nesom and others, as responsible for that fact.

Q. Then this article and publication was to refer to Commissioner Worcester and Dr. Nesom on that point, was it?

A. The fact refers to all those persons who might have been responsible, as could be materially seen in the reading of the article itself.

Q. And at the time the article was published you understood that Commissioner Worcester and Dr. Nesom were responsible, did you not?

A. I have answered that question of yours already; as I have stated public opinion pointed to these gentlemen as responsible for that act, and allow me to say, Sr. Fiscal, that I cannot declare more than what the article itself shows, that would not be to testify about the facts in the article, but about other facts.

Q. Then that paragraph in the article about which we have been talking was intended to refer to the parties who were responsible for this slaughtering of cattle in the Bay on or about the 20th day of October, 1908, was it not?

A. Yes sir, without determining.

Q. And at the time that article was published you did
356 not know who was responsible, did you?

A. Determinately I did not know.

Q. In publishing this article did you act on the statement of anybody that Commissioner Worcester was responsible for the abuses alleged to have been committed?

Sr. AGONCILLO: I object to the question, the article is general.

The COURT: The witness may answer.

Sr. AGONCILLO: Exception.

A. I have already answered that question, Sr. Fiscal.

Q. I will ask you to please answer it again?

A. I have also answered saying that this article was drafted under the influence of the spirit of public opinion in the main at that time.

Q. What was the public opinion at that time upon which you acted?

A. I have already answered that question.

Q. Please answer it again?

A. By saying that public opinion pointed to Commissioner Worcester and the Director of the Bureau of Agriculture, and probably to others, as responsible for that act.

Q. Was that the information upon which you acted in publishing this article?

A. Yes sir.

Q. Then you referred to Commissioner Worcester and Dr. Nesom, did you not?

357 A. If it referred to them their names would have appeared in the article.

Q. That does not answer my question, I asked you whether you referred at the time you published that article to Commissioner Worcester and Dr. Nesom?

A. No sir, it does not refer to any individual whatsoever.

Q. Who does it refer to in general?

A. To the persons who might be responsible.

Q. And you understood at the time it was published that Commissioner Worcester and Dr. Nesom were responsible, did you not?

A. That they were pointed out as being responsible in this matter of slaughtering of diseased cattle.

Q. You have testified as to the purpose and object of this article, have you not?

A. Yes sir.

Q. How do you know what the purpose and object of that article was?

A. I know on account of the information I received as director of the newspaper, and as being the only one who might know the purposes and end for which each and every one of the articles is published.

Q. Did you write *to* the article?

Sr. AGONCILLO: I object to the question, as not proper cross examination; this witness is the defendant in this case.

The COURT: Objection sustained. This witness is the defendant and is entitled to keep his mouth shut on any subject.

358 Q. Now you have stated, I believe, that you had no reason to be on bad terms with Commissioner Worcester, either officially, or personally, did you not?

A. I have not said that I had no reason to be on bad terms with him officially or particularly; what I did say was that I did not have any personal trouble as a private gentleman with him.

Q. Did you have any reason at the time this article was published to be on bad terms with Commissioner Worcester officially?

A. Yes, if it were true that Commissioner Worcester was really responsible for these acts "El Renacimiento" has reason to be on bad terms with him as an official, and to censure him as an official.

Q. Did you believe at the time this article was published that Commissioner Worcester had committed the acts which were denounced in the article?

Sr. AGONCILLO: I object to the question on the ground that the article speaks for itself, and as not proper cross-examination.

The COURT: Objection sustained; this witness can testify if he wants to, but he cannot be required to testify.

Q. Did you know at the time you published this article of any official or any individual in the Philippine Islands or anywhere on the face of the earth, who had committed the acts which you charge in that publication?

Sr. AGONCILLO: The same objection.

The COURT: Objection overruled.

359 Sr. AGONCILLO: Exception.

A. I know of no determinate, individual person that might have committed all and each one of these facts, therefore the protest in the article, in general, is against all those who have committed these acts, but not against any thing determinate.

Q. Did you know at the time of the publication of this article of any individual or official in the Philippine Islands who had committed any of these acts which are charged in this article?

Sr. AGONCILLO: Objected to as not proper cross examination.

The COURT: Objection overruled.

Sr. AGONCILLO: Exception.

A. No sir, for each act several persons.

Q. For the fact of slaughtering the cattle in the bay, who were the several persons who were responsible for that?

A. I have already answered that question.

Q. Answer it again.

A. I have stated that public opinion pointed out Commissioner Worcester and the Director of the Bureau of Agriculture and probably other officials, as responsible for it.

Q. Who was the one, or who were the several persons who were responsible for spying out the mineral wealth of Benguet and appropriating it to their own use, and making and unmaking laws to suit the interests of the persons who engaged in that business?

Sr. AGONCILLO: Objected to as incompetent.

The COURT: Objection overruled, with the exception of

360 the portion that assumes it might be incompetent on the ground that the precise condition has not been shown.

Mr. SOUTHWORTH: I will amend the latter part of my question which refers to the making and unmaking of laws to suit the in-

terests of the person who engaged in that business by substituting "thanks to legal facilities made and unmade at will."

A. As I have stated, there is no determinate person responsible for it.

Q. Did you know of any one person, or several persons who had committed the abuses which are denounced in that paragraph referred to?

A. I do not know directly of anybody.

Q. Did you know indirectly of anybody who was responsible?

A. I know that Dr. Barrows, Dr. Saleeby and others, ascended the mountains of Benguet.

Q. Were Dr. Barrows and Dr. Saleeby the men referred to in that paragraph of the article?

A. No sir; if that paragraph had referred to them their names would have appeared there.

Q. To whom did it refer?

A. As I have stated, it did not refer to anybody in particular.

Q. Referring to the paragraph commencing with the word "Presentandose" and ending with the word "climas," I will ask you to whom that paragraph refers, to what person or persons?

361 A. That paragraph does not refer to any determinate individual person.

Q. Do you know of any one person, or several persons who have committed the acts denounced in that paragraph?

A. If I knew who the persons were, their names would have appeared in the article.

Q. Therefore you did not know of any person who had been guilty of the acts denounced in that paragraph, and if you had their names would have appeared there?

A. Determinately, no.

Q. Did you know it indeterminately?

A. Indeterminately it might refer to several persons who have committed these acts.

Q. Who were some of the persons who had committed these acts?

Sr. AGONCILLO: Objected to on the ground that it is not proper cross examination, and the witness refuses to answer on the ground that the answer might tend to incriminate the accused.

The COURT: Objection sustained.

Mr. SOUTHWORTH: If this is the ruling of your Honor there is no use of going on further with this cross examination but I have not heard the accused make any objection.

The COURT: The objection was made by his counsel, the accused does not have to make it himself.

Mr. SOUTHWORTH: That is all.

362 T. R. FLACK, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Sr. AGONCILLO:

Q. State your name?
A. T. R. Flack.
Q. Where do you live?
A. Manila.
Q. What is your occupation?
A. Clerk, Bureau of Agriculture.
Q. I will hand you two documents, marked for identification Exhibits D. 27 and D. 28, and will ask you to state what they are?
A. They are General Orders, Nos. 10 and 12, of the Bureau of Agriculture.
Q. Will you kindly state if these are authentic copies of the original?
A. Yes sir, they are.

Sr. AGONCILLO: I offer these documents in evidence, which have just been identified by the witness, as Exhibits D. 27 and D. 28.
The COURT: There being no objection, they may be received.
Sr. AGONCILLO: The defense closes.
The COURT: Is there any rebuttal?
Mr. SOUTHWORTH: Yes sir.
The COURT: Proceed.

363 *Rebuttal.*

E. S. CROMWELL, recalled in behalf of the government, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. I will show you an article in the Cablenews-American of October 23rd, 1908, headed "Death on Land or Water. Beef Should Be Killed Where?", marked Exhibit D. 11., and will call your attention to the following statement: "According to information given to the Board by City Assessor and Collector Cromwell, Commissioner Dean C. Worcester told the Director of Agriculture and the Director of Agriculture told George Lack cattle might be killed in the Bay." I will ask you if you made any such statement or gave any such information to the reporter of the Cablenews-American?
A. I never intended by any statement made by me on that occasion to convey any such idea as that.
Q. I will call your attention to another paragraph appearing in the same article, which is as follows: "Mr. Cromwell. 'Yes, Messrs. Lack and Davis showed me a copy of a letter in which the Secretary of the Interior directed the Bureau of Agriculture that this be allowed. Twenty animals were slaughtered yesterday and were introduced into the city markets without any inspection whatsoever." I will ask you if you made that statement, and if not to please state

what you said in connection with that matter as reported in that paragraph?

364 A. In the first place I never stated that Lack and Davis showed me any letter of any description, which would simply show how erroneous the entire quotation is. A copy of the letter in question was shown me by Mr. Charles M. Connor, Assistant Director of Agriculture, and I so stated at the Board. I never saw Lack and Davis in connection with the matter. The statements in detail are not a true statement of the facts as said by me. I am not quoted properly. The idea I intended to convey to the Municipal Board was that I had seen a copy of a letter from the Bureau of Agriculture to Lack and Davis in which certain permission was given them regarding the removal from ship to lighter of a number of cattle, and also regarding the method of disposing of such offal in case they were allowed to be killed. I naturally inferred from the reading of that letter that Lack and Davis had secured subsequent approval from the Bureau of Agriculture for the killing of these cattle, and as some member of the Municipal Board seemed anxious that no investigation be had but that the matter be placed in the hands of the Prosecuting Attorney for Prosecution immediately, I said to the Board that Lack and Davis had received a letter from the Bureau of Agriculture, written under verbal authority of the Secretary of the Interior, authorizing them to do certain things in connection with this killing of cattle, and probably they would find that they were duly authorized to do the things they had done, and I there-

365 fore suggested and recommended to the Board, that a committee be appointed to thoroughly investigate this before prosecution be begun.

Q. I will ask you to state whether or not you said on that occasion that the Secretary of the Interior had authorized Lack and Davis, or anybody else, to kill these cattle in the Bay?

A. It was not my intention to convey any such impression as that, and I am positive that I did not convey any such idea as that.

Q. I will show you what purports to be a letter from Mr. C. M. Conner, Acting Director of the Bureau of Agriculture, to Lack and Davis, bearing date October 20th, 1908, and marked for identification Exhibit E. of the government, and will ask you to state whether or not that is the letter to which you referred when you spoke of having seen a letter from the Bureau of Agriculture to Lack and Davis?

A. Yes, I think it is, in fact I am almost positive that this is the original of the copy shown me by Mr. C. M. Conner about ten minutes before I went to the Municipal Board, and I referred to this letter.

Q. I will call your attention to another paragraph of this same article in the Cablenews-American in which the statement is made: "Mr. Cromwell, 'No, but they had a written permit from the Director of Agriculture given, I understand, on the authority of the secretary of the Interior.'" I will ask you if you used that language and to what did you refer as "written permit from the Director of

366 Agriculture given on the authority of the Secretary of the Interior?

A. I do not think it is possible I used such language, at any rate I referred to this letter marked Exhibit E.

Mr. SOUTHWORTH: That is all.

Cross-examination by Sr. AGONCILLO:

Q. Will you kindly state to the Court whether or not you are the person who informed the Municipal Board, or the President of the Municipal Board, that there was a slaughtering of cattle in the Bay of Manila?

A. Yes sir.

Sr. AGONCILLO: Then I desire to introduce this letter, Exhibit E., for the defense in connection with the testimony of Mr. Cromwell.

The COURT: It may be admitted as an exhibit on the part of the Government.

Sr. AGONCILLO: That is all, Mr. Cromwell.

DAVID P. BARROWS, recalled in behalf of the government, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. I will ask you to state to the Court whether or not you have ever had anything to do with the mining laws in Mindoro or Mindanao?

A. No sir.

Q. I will ask you to state to the Court whether or not you have ever had anything to do with the location of hotels upon filled
367 in land of the city of Manila?

A. No sir.

Q. I will ask you to state to the Court whether or not you have ever had anything to do with the buying of land for the city of Manila at fabulous prices, or at any other kind of prices?

A. No sir, I have not.

Mr. SOUTHWORTH: That is all.

Sr. AGONCILLO: No cross-examination.

N. M. SALEEBY, called in behalf of the government in rebuttal, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. I will ask you to state to the Court whether or not you have ever had anything to do with the making or changing or altering or amending of the mining laws of Benguet in any capacity?

A. No sir, I have not.

Mr. SOUTHWORTH: That is all.

Sr. AGONCILLO: No cross-examination.

GEORGE P. AHERN, called in behalf of the government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. George P. Ahern.
Q. Where do you live?
A. Manila, P. I.
368 Q. What official position do you hold, if any?
A. Director of Forestry.
Q. How long have you been Director of Forestry?
A. Since April 14th, 1900.
Q. Do you know Commissioner Dean C. Worcester?
A. Yes sir.
Q. I will ask you to state whether or not you ever went to the island of Mindoro with Commissioner Dean C. Worcester, or were ever in the island of Mindoro with Commissioner Worcester, in 1903, or at any other time?
A. We went to the province of Mindoro in July, 1905, but we landed only on the island of Cimarara in the province of Mindoro and never landed on the island of Mindoro. I have never been on the island of Mindoro since I have been in the Philippines with Commissioner Worcester.

Mr. SOUTHWORTH: That is all.
Sr. AGONCILLO: No cross-examination.
The COURT: The further hearing of this case will be continued until half past two o'clock tomorrow afternoon.

JANUARY 21ST, 1909.

Pursuant to adjournment the case was called this p. m., with the following appearances: Mr. Southworth in behalf of the Government; Srs. Agoncillo, Salas, Diokno and Ferrer on the part of the defendant Teodoro M. Kalaw.

369 A. O. ZINN, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. A. O. Zinn.
Q. Where do you live?
A. At No. 2 Calle Padre Faura.
Q. What is your occupation?
A. Private secretary to Commissioner Worcester.
Q. Were you private secretary for Commissioner Worcester about the 20th day of October of last year?
A. Yes sir.
Q. Do you remember the occasion when some cattle imported by Lack & Davis, about the 20th day of last October, were said to have been slaughtered in the Bay of Manila?
A. Yes sir.

Q. Did you have any communication with the Bureau of Agriculture and also with Mr. Worcester in regard to this matter about that time?

A. Yes sir.

Q. Will you please state to the Court what occurred between you and Mr. Worcester and the Bureau of Agriculture on that occasion?

A. My recollection at this time is that the Director of Agriculture telephoned to the office, and I answered the phone, and he
370 wanted to know whether Mr. Worcester had any objection to the slaughtering of the cattle in question in the bay.

Q. Did you then have any communication with Mr. Worcester about the matter, and if so, please state what is was?

A. Mr. Worcester was in session at that time as Commissioner, and I went into the session room and repeated the conversation to him, and he said he had no objection.

Q. Is that the only communication so far as your knowledge goes, which passed between Commissioner Worcester and the Bureau of Agriculture in regard to this matter?

A. Yes sir.

Q. Now you have stated that Mr. Worcester said he had no objection, did you communicate his reply to the Bureau of Agriculture?

A. Yes sir, my recollection is that I communicated it to him verbatim.

Q. And is that the only communication which Commissioner Worcester authorized you to communicate to the Bureau of Agriculture?

A. Yes sir.

Q. And the only one which you communicated?

A. The only one which I communicated.

Q. I will show you a letter signed by "Dean C. Worcester," which has been offered in evidence as Exhibit D. 18 of the defendant, and will ask you to state who wrote the name "Dean C. Wor-
371 cester?"

A. I wrote that myself, and I also wrote the interlineations in that letter.

Q. Is that Commissioner Worcester's signature, or not?

A. It is Commissioner Worcester's name, signed by me, with my initial attached.

Q. What is that letter under the signature at the right hand corner?

A. That is the abbreviation I adopt for my name in official correspondence.

Mr. SOUTHWORTH: That is all.

Cross-examination by Sr. AGONCILLO:

Q. Will you kindly state to the Court if the letter which you have just had before you, marked Exhibit D. 18, and which you have stated to have been signed by you, had the same character as official correspondence?

A. I do not understand the question, I do not know what you mean by the same character.

Q. I mean if it has the same official value?

Mr. SOUTHWORTH: I object to this as not proper cross-examination, I only asked as to the signature.

The COURT: The witness may be examined as to how it was signed and it is proper to show whether it meant anything or not.

WITNESS: As I understand the question counsel wants to know as to whether or not that was an official letter: an official letter may be signed by me and I sign for Mr. Worcester as Secretary of the Interior with the letter Z. written below the signature.

372 Q. Will you kindly state to the Court whether or not you signed that letter with the consent and knowledge of Mr. Worcester?

A. I cannot state that from recollection, I do not remember. I sign a great many documents and letters without his knowledge.

Q. Will you kindly state whether or not at the time you signed this letter, Exhibit D. 18, with the name of Mr. Worcester, you had his authorization for doing so?

A. I had the authorization which I have at all times for signing both personal and official letters.

Sr. AGONCILLO: That is all.

CHARLES H. SLEEPER, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. Charles H. Sleeper.
Q. Where do you live?
A. At No. 414 Calle Nueva, Malate.
Q. What official position do you hold, if any?
A. Director of Lands.
Q. How long have you been director of lands in the Philippine Islands?
A. Three years.
Q. In your official capacity are you familiar with the lands and land titles to the town of Baguio in the province of Benguet?

373 A. Yes sir.

Q. Have you an official map of the town site of Baguio?
A. I have.
Q. Please produce it?
A. Here it is.
Q. Can you tell from this map the location of the barrio of Loakan?
A. Approximately.
Q. Do you know about where the land which was occupied for a time by Commissioner Worcester's nephew is located?
A. Approximately on the map, yes.
Q. Now I will ask you to explain to the Court whether or not any private individual, or any official of the government owns any land

in the vicinity of the barrio of Loakan, and in addition please state the status of the land about Loakan?

A. Outside of three parcels, for which applications are now pending in the Bureau of Lands, the location of which are shown on this plan, I know of no lands owned by private individuals in the territory of Loakan included within the Baguio township.

Q. I will ask you to state whether or not this land about the barrio of Loakan is included within the town site of Baguio?

A. Yes sir.

Q. When were these lands there included within the town site of Baguio?

A. When the reservation was made by the Philippine Commission in 1906, which is the third reservation which was made
374 in Baguio township; one was made in 1903, one in 1904 extending north, and the third extending south in 1906.

Q. What was required under this reservation in order to perfect any titles or claims which persons had to any of that land?

A. That is governed by the Public Land Act and the Land Registration Act, one of which prescribes for town site reservations and the other prescribes that after such reservations are certified to the Court of Land Registration, the Court issues notices to all and they are given six months in which to file claims.

Q. I will ask you to state whether or not Commissioner Worcester, or Commissioner Worcester's nephew, filed any application for any of these lands?

A. Not to my knowledge.

Q. Now in case this application is not filed within six months, what effect does that have on any claims which have been made to that land?

A. In case application is not made prescription runs against it.

Q. Were there any claims filed by other parties to portions of that land?

A. Yes sir.

Q. Does that map which you have before you indicate the portions of land claimed by other parties?

A. Do you mean within the reservation?

Q. Yes sir.

A. Yes.

375 Q. I will ask you to state who those parties are?

A. There are several parties: Seco Carreño is one of the parties, M. Asuncion, Sipo Carreño, and there are several others within the reservation, but none within the barrio of Loakan, although within the limits of the military reservation, which is perhaps three thousand meters north of the center of Loakan there is a claim by one of the Carreños, which is now pending before the courts, I understand.

Q. I understand you to say that within the barrio of Loakan, within the town site reservation, no person has made any claim to any of the land?

A. There are, however, on file applications for free patents under the Public Land Act.

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Q. Do you know by whom those applications are made?
A. All by Igorotes, and all are shown on this plan here.
Q. Do you know of some land in the province of Nueva Ecija that an application has been made for by a nephew of Commissioner Worcester to lease from the Government?
A. I do.
Q. Will you please state to the Court the status of that lease?
A. The lease is now pending final plans for survey.
Q. Have you a copy of the application made by young Mr. Worcester, E. L. Worcester, for that land?
A. Yes.
Q. Please produce it.
A. Here it is (handing to counsel Exhibit G.)

Mr. SOUTHWORTH: I will ask that this application be
376 identified as an exhibit of the government, and will ask permission to put in a certified copy in lieu of the original.
The COURT: You may do so.

Q. I will ask you to state to the Court the status of the land for the lease of which Mr. E. L. Worcester, the nephew of Commissioner Worcester, has made an application for?
A. It was unoccupied, uncultivated, public agricultural land.
Q. Please state who has the title to this land?
A. The title is in the government of the United States.
Q. I will ask you to state whether or not in your official capacity, you have had anything to do with securing titles to the land in Benguet to the Igorotes there, and if so what effort has been made by you as Director of Lands, and Commissioner Worcester and other officials of the Government, to protect the title of the Igorotes?
A. Soon after I became Director of Lands I found that very few free patent applications were being made in the non-christian provinces. I therefore took the matter up with the Secretary of the Interior, Mr. Worcester, with a view to sending inspectors into these territories in order to facilitate the people in getting title to the land under the Public Land Act. Commissioner Worcester agreed that it would be a good proposition, and it was finally decided to send surveyors into these provinces, whenever we had men avail-
377 able, in order that they might not only make out applications but also survey the land and thus reduce the expense to the Government, rather than send inspectors at that time and then later on have the land surveyed, and a survey party was sent into the town site of Baguio to endeavor to get all the Igorotes, or others, who claimed land under the free patent chapter of the Public Land Act, to put in their entries, and it resulted in a large number of entries, not only in the town site but throughout the province of Benguet, in Lepanto and Bontoc.
Q. You have stated that one of the purposes of this action on the part of yourself and Commissioner Worcester was to reduce expenses to the Government; I will ask you to state if you and he had any other purpose?
A. Yes sir, in using the surveyors they run a line from one barrio

or township to another, and thus we get a partial map of the entire territory.

Q. By this method which you pursued did you render assistance to the ignorant and uninformed people in getting titles to their land?

The COURT: What has this got to do with this trial?

Mr. SOUTHWORTH: It is to offset the testimony of some witnesses to the effect that Commissioner Worcester and Governor Pack attempted to take land away from these people.

The COURT: We are not going into trying the policy of the Government in relation to anything. There is no question
378 raised as to the honesty of the Government or the rectitude of it, and I am going to sit on that proposition. I do not think you had better put Mr. Worcester on trial.

Mr. SOUTHWORTH: That is all.

Cross-examination by Sr. AGONCILLO:

Q. Will you kindly indicate on this plan before you, Mr. Sleeper, where is the land situated in the barrio of Loakan?

A. Here it is (indicating on map).

Q. Will you kindly mention the points on the map?

A. I don't know the limits of the barrio of Loakan.

Q. Will you kindly state to the Court if this place where the name "Worcester" appears, whether that land belonged to Commissioner Worcester?

A. No sir.

Q. Then how is it that the name appears there?

A. That is a triangulation point made by Mr. Guerdrum, who made the first survey of the Baguio town site, it is a reference point for the survey.

Q. So the name here of "Worcester" is only meant as a point of reference?

A. That is all it means on that map, yes.

Q. And how is it that the land surveyor first thought of the name of Worcester as a point of reference?

A. I only know from conversation with the man who named it.

Q. But this land with the name of "Worcester" is in the
379 barrio of Loakan, is it not?

A. Yes sir.

Q. Will you kindly indicate on this plan where appears the lot of Commissioner Worcester?

A. Lot No. 45, residence section A.

Q. Is this private land?

A. Yes sir.

Q. Is this the property of Commissioner Worcester?

A. Yes sir.

Q. In what barrio is this?

A. I think that is within the limits of Baguio proper.

Q. Is it cultivable land?

A. I think not, it is a hill.

Q. Is there any house on it?
A. Yes sir.
Q. To whom does that house belong?
A. To Dean C. Worcester, Secretary of the Interior.
Q. How near is the road from this point of reference which is called "Worcester"?
A. About three hundred meters.
Q. Does the train go through this place which you call the hill of Commissioner Worcester?
A. No, there is no train yet in Baguio, but there is a wagon road that goes very near his house, in fact there is a road which leads up to his house.
Q. Have you got anything to do with homestead petitions?
A. Yes sir.
Q. And those applications which are not for homesteads, do you have anything to do with these?
380 A. I am presumed to know all applications for public lands and pass upon.
Q. And in regard to private persons have you got to know about these?
A. Really I do not understand that question.
Q. When private persons make requests for inscription of that land in accordance with the mortgage law; do you have anything to do with that?
A. No sir.

Sr. AGONCILLO: That is all.

Redirect examination by Mr. SOUTHWORTH:

Q. I will ask you to state whether or not the law requires all private titles to be recorded in the records of the town site of Baguio?

Sr. AGONCILLO: I object to the question, all this is shown by the law itself.
The COURT: I do not see the object of this.
Mr. SOUTHWORTH: As to whether this town site plat shows this.
The COURT: Proceed.
A. Yes, and I am compelled by law to defend all suits against the Government in reference to town sites in the Court of Land Registration.

Mr. SOUTHWORTH: That is all.

Recross-examination by Sr. AGONCILLO:

Q. And how is it that you have stated before that you have nothing to do in the registration of the land?
381 A. I did not say that.

Sr. AGONCILLO: That is all.

GEORGE H. GUERDRUM, called in behalf of the government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. George H. Guerdrum.
Q. Where do you live?
A. Manila.
Q. What is your occupation?
A. Sanitary Engineer, Bureau of Health.
Q. Have you occupied any other official position with the Philippine Government?
A. Yes sir.
Q. Please state what it was?
A. I was Assistant Engineer in the Bureau of Engineering and later on I had the same position when the Bureau of Engineering became the Bureau of Public Works.
Q. I will ask you if in your official capacity you did any surveying in the town site of Baguio, at any time?
A. Yes sir.
Q. I will show you a document, marked Exhibit D. 19, and will refer you to the sixth line from the bottom of the first page where it says "Estacion de la Hacienda de Worcester", and will ask you to explain to the Court what this means, what it indicates?

382 Sr. AGONCILLO: I object to the question, as this exhibit has been accepted by the other side without objection, and therefore it is not a matter for cross-examination.

The COURT: Objection overruled.

Sr. AGONCILLO: Exception.

A. I prefer to see the plat.
Q. I will show you what purports to be the plat of the Baguio town site, and will ask you to testify from that plat.
A. I was up there at the time that these surveys were made, and I was in charge of the surveys for the new town site, and this country up there being of such a large extent and sparcsely populated, and a great deal of my work being triangulation, it was very difficult for me at times to find names which would adequately describe the mountain tops which I made triangulation points. At this particular point I understood that there was a young man who was a nephew of Commissioner Worcester, who had lived there for a short time, and who was collecting lily bulbs for shipment to the United States, and his name being Worcester, and I having already described several other points as merely the top of a wood, or a hill top, or any other common object, on account of the absolute impossibility of finding the correct names of some places, and this young gentleman, Mr. Worcester, having lived at this particular place for a certain number of months, I forget how many, I called that particular tripod I put up "Worcester."

Mr. SOUTHWORTH: That is all.

383 Cross-examination by Sr. AGONCILLO:

Q. You have stated that Mr. Worcester had lived in this place?
A. I have stated that the nephew of Commissioner Worcester lived there.
Q. And that is the only reason you had for putting there the name of Worcester?
A. Yes sir.
Q. Was Commissioner Worcester's nephew occupying that land at that time?
A. At the time I named that tripod young Mr. Worcester had moved away.
Q. Will you kindly state to the Court if you are the one who surveyed all these lands?
A. I was up there several years, and I made a great many surveys there, and I located this particular point, and I also located these triangulation points marked on this plat, but there were other surveyors up there at the time. I understand that this map is compiled from a number of surveys made during that same general period.
Q. Then you only intervened in the surveys made about the barrio of Loakan?
A. No sir.
Q. What other points in the plat did you have anything to do with?
A. I made the survey of the exterior boundary of the reser-
384 vation, as it now is, and I have also made surveys from one end to the other of the reservation.
Q. This hill which appears here as that of Mr. Worcester, is that also a point of reference?
A. There is no triangulation there, and I did not name that point.
Q. You did not intervene in this?
A. I made some surveys there.
Q. Will you please read the third paragraph of Exhibit D. 19?
A. I have read it.
Q. Will you kindly point out on the plat the hacienda of Mr. Worcester that is mentioned in this Exhibit D. 19?
A. It is very difficult for me from a description of this kind, without any instrument, to answer that question.
Q. Will you kindly state whether or not at the point where is the hill of Mr. Worcester, there is a house?
A. There is, yes sir.
Q. To whom does that house belong?
A. I understand it belongs to Commissioner Worcester, but I would like to explain that the gentleman is alluding here to another part of the plat, and not to the point which I originally described.
Q. The position which you now occupy, is that under the supervision of Commissioner Worcester as Secretary of the Interior?
A. Yes sir.

Q. And when you were measuring this land, was it under his supervision also?

385 A. Under the Bureau of Public Works.

Q. And is not the Department of Public Works under the supervision of Mr. Worcester as Secretary of the Interior?

A. As far as I know it is under the direction of the Secretary of Commerce and Police.

Sr. AGONCILLO: That is all.

M. A. CLARKE, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?
A. M. A. Clarke.
Q. Where do you live?
A. No. 327 Calle Real, Malate.
Q. What is your occupation?
A. Merchant.
Q. Do you know a man by the name of Emigdio Octaviano?
A. I think I know who you mean, formerly the Secretary of Benguet Province.
Q. I will ask you to state to the Court whether or not at any time you travelled over the province of Benguet, or any portion of it, looking over the land or prospecting for mines with Commissioner Dean C. Worcester?
A. No sir, I never have.

Mr. SOUTHWORTH: That is all.

Cross-examination by Sr. AGONCILLO:

Q. Did you not at any time ascend the mountains of Benguet?

386 A. I have been in Benguet many times.

Q. Will you kindly state to the Court whether or not you possess some mining claims in that region?
A. Yes sir.

Mr. SOUTHWORTH: Objected to as not proper cross-examination.
The COURT: Objection sustained.
Sr. AGONCILLO: But the question has been already answered.
The COURT: The answer will be stricken out.
Sr. AGONCILLO: Exception.

Q. Have you not been along with some friends ascending the mountains of Benguet, and will you not kindly tell us if among these friends was not Commissioner Worcester?
A. I never went up to Benguet in company with Mr. Worcester.
Q. Are you a friend of Commissioner Worcester?
A. I think so, yes.
Q. Have you seen Commissioner Worcester at Benguet at any time?

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A. Oh, yes.

Q. And during your days of vacation there did you not meet him in the hills of Benguet?

A. I might have passed him in the road in town, but I never was in company with him in any trips.

Q. Are you not a friend of Commissioner Worcester?

A. Yes sir, but I have never taken any trips with any Government official up there.

Sr. AGONCILLO: That is all.

387 Cross-examination by Sr. SALAS:

Q. You were asked if you were a friend of Commissioner Worcester: did you and Commissioner Worcester have any controversy about the ownership of some land which Commissioner Worcester claimed as belonging to the Government?

A. Yes sir.

Q. Commissioner Worcester claimed it as belonging to the Government and you claimed it as belonging to the Igorots?

A. Yes sir, Commissioner Worcester and I had some strong differences of opinion which lasted a number of years, but that was simply a difference of opinion, it was not a matter of friendship. I claimed certain land as belonging to the Igorots and Commissioner Worcester claimed it as belonging to the Government, and this naturally caused a difference of opinion.

Sr. AGONCILLO: So you were the defender of the Igorots against Commissioner Worcester?

A. In this particular instance, yes.

Mr. SOUTHWORTH: Do you mean Commissioner Worcester in his official or his private capacity?

A. Commissioner Worcester was representing the Government, that is all, there was no personal matter, it was simply as a Government official.

Sr. SALAS: That is all.

388 CHARLES M. CONNER, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. State your name?

A. Charles M. Conner.

Q. Where do you live?

A. No. 58 Calle San Andres.

Q. What is your occupation?

A. Assistant Director of Agriculture.

Q. I will ask you if you remember the occasion when some cattle were said to have been slaughtered in the bay of Manila about the 20th day of October of last year?

A. Yes sir.

Q. I will ask you if the Bureau of Agriculture took any steps in that matter, and if so, please state what to the Court?

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A. To what steps do you refer?

Q. Did they issue any order, any permit, or any letter, or anything of that kind?

A. The animals are always inspected by the chief veterinarian or one of his assistants, and in case the animals are infected, notice to that effect is made to the Director.

Q. I will show you a letter, marked Exhibit E., and will ask you if you signed that letter?

A. Yes sir, that is my signature.

389 Q. I will ask you to state to the Court whether or not the Bureau of Agriculture took any other action than what is indicated by this letter in regard to the slaughtering of these cattle in the Bay?

A. In regard to the slaughtering of the cattle in question as mentioned in this letter?

Q. Yes.

A. If I remember correctly, I think not, I do not handle these matters personally myself.

Q. Well you signed that letter, Exhibit E.?

A. Yes sir.

Q. Is that the only communication you sent on that subject?

A. Yes, and I sent it in the absence of the Director, who upon leaving authorized me.

Q. Is that the only authorization which you gave?

A. Yes sir, the only authorization which was given in connection with the slaughtering of these cattle.

Mr. SOUTHWORTH: That is all.

Cross-examination by Sr. AGONCILLO:

Q. I will show you a letter marked Exhibit D. 17., and will ask you to please state if this has been authorized by you and signed by you?

A. That is part of the same communication which is referred to in Exhibit E. This letter, Exhibit D. 17, is directed to the Collector of Customs and is a part of this other letter, Exhibit E.

Q. And is this letter, Exhibit D. 14, also signed by you?

A. Yes sir.

390 And this other letter, Exhibit D. 12., was that also signed by you?

A. Yes sir, that is a formal notice.

Sr. AGONCILLO: That is all.

DEAN C. WORCESTER, recalled in behalf of the Government, testified as follows:

Direct examination by Mr. SOUTHWORTH:

Q. You have heard the statement of the witness Constantino as to the fact that you asked him on one occasion when you visited the land occupied by your nephew in Nueva Ecija how the hacienda was

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getting on: please state whether or not you made that statement to him and asked him that question, and if not please state what you did say to him on that occasion?

A. I think the witness stated that I asked him "how is my hacienda". If I had a hacienda administered by my nephew, and desired to ascertain how it was getting on, I should not have applied for information to his Filipino cook. I did not ask the cook how my hacienda was, or how our hacienda was. What I said to the cook was "Kital la hacienda." What I intended to ask of him was how he liked it, what he thought of it.

Q. You heard the statement of the witness Buenaventura as to certain remarks which you made at the house of Mr. Robb?

A. I did.

391 Q. Please state whether or not you made the remarks which he said you made on that occasion, and please explain the circumstances under which you were there on that occasion, and what took place?

A. Mr. Buenaventura came to the house with another man who desired to rent me a horse, and he came to interpret, as the other gentleman said he did not understand either Spanish or English. We discussed the subject of hiring a horse, and when we had completed the arrangement this gentleman departed. So far as I remember I did not discuss with my nephew at all during their presence as to the progress of things which he had planted on the land which he was occupying. I did however, if I remember well, when these gentlemen were not present ask him in detail as to the progress of what he had planted on his hacienda, asking him what he had planted and how each different kind of experimental planting was progressing. I asked him about capac, guinea grass, camotes, and other things, naming them in each case, but I did not ask him "how are the plants on our hacienda", nor did he reply that they were all right. On the contrary, some of the things he had planted were growing very badly, or not at all.

Q. I will ask you to state to the Court whether or not you own that land occupied by your nephew in Nueva Ecija, or own any interest in it?

A. I have never owned it, nor had any interest in it of any sort whatsoever.

392 Q. I will ask you to please state the status of that land there as to title?

A. It is a piece of public land belonging to the Government of the United States. My nephew is at present in occupation of it, and he has presented an application to be allowed to lease it from the Government.

Q. I will call your attention to the testimony of the witness named Rafael Abad from Mindoro, and will ask you to state to the Court whether or not you made a trip up the river in Mindoro to a place called Chicago in September or October, 1903?

A. I did not. I left the Philippine Islands for the United States on the 27th of June, 1903, returning on the 19th of December of the same year.

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Q. I will ask you to state whether or not you ever made a trip up the Baco river in Mindoro in 1903 in company with the Director of Forestry, or at any other time?

A. I did not visit the island of Mindoro during the year 1903. During January and the first part of February of that year I was ill in Manila, and as soon as I was able to travel I went on a long inspecting trip through Northern Luzon, returning to Baguio about the middle of April. I came to Manila only long enough to escort Governor Taft to Baguio, he also being ill, remaining there until the time to go on leave in the United States, leaving as I have
393 previously stated June 27th and returning on the 19th of December. I never visited the island of Mindora at any time in company with the Director of Forestry. I visited an island south of Mindoro, included in the province, at a very much later date, but I never went up the Baco river with him at any time, nor visited the island of Mindoro itself at any time with him.

Q. I will call your attention to the testimony of the witness Ambrosio Alban, in which he stated he made a trip up the Baco river with you, and that you surveyed some land up there, and discussed the purchase of land from him. I will ask you to state whether or not this is true, and whether or not you made any such statement, or surveyed any land?

A. This man stated that I went up the Baco river with him in 1903. I did not, I did not visit the island during that year. I never offered to buy land of him. I never examined land with him. I never measured land in company with him or anybody else. I never measured a piece of land in my life, and I would not know how to go about it.

Q. I will ask you to state whether or not during the time you were negotiating for the Government the purchase of certain land in the city of Manila you received any communication from the City Assessor and Collector?

A. I did.

Q. I will show you what purports to be a letter from the
394 City Assessor and Collector, Mr. A. W. Hastings, which I ask to have marked Exhibit H. for identification and will ask you to state whether or not that is the communication to which you have referred?

A. It is.

Mr. SOUTHWORTH: I will ask permission to introduce a certified copy of this document in lieu of the original which belongs to the office files.

The COURT: You may do so.

Q. I will call your attention to the testimony of Mateo Carantes, in which he stated that you had taken part of his land and that of some other Igorotes, and will ask you to state to the Court whether or not that is true, and to explain matters connected with your transactions with Mateo Carantes?

A. The Igorotes in Benguet have some confused ideas as to what entitles them to claim ownership in land. They have long cherished

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the idea that if they have driven a cow over a piece of land it is theirs, and they have seriously made claim to land on the ground that at some time they had pastured cattle there. At the time the reservation was set aside, a very large tract of land near Loakan was claimed by Mateo Carantes, and where his claim left off there began a tract claimed by Mateo Correño of Baguio, and where his claim left off there began a tract claimed by his wife, and where that tract left off there began a tract claimed by an old Igorot of Pacdal whose name I forget. So that between them they claimed
395 everything from the southern part of Loakan up to about the point where Mr. Forbes' house is now situated, a tract about six miles long and of varying width. They had no claim in law to most of this land. Mateo Correño sold his right to part of his land to Mr. Clarke, and the case was hurried through the land court at Baguio, and I think a decision was given in favor of Mateo Correño, or in favor of Mr. Clarke, and as soon as I discovered this I gathered evidence and caused the matter to be again taken up, and the case was decided against these gentlemen, and it was again decided against them in the Supreme Court of these islands, and is now pending in the Supreme Court of the United States. This is the land we are said to have taken away from Mateo Correño, and part of the land claimed by Mateo Carantes was included in the military reservation. Now this did not take away any right that Mateo Carantes might have, but it did impose upon him the necessity of making his claim within six months. The Government far from interfering with the Igorotes in the matter of their land, and recognizing the fact that they were an ignorant people, has taken special measures to protect them, which have never been taken in aay of the provinces organized under the Provincial Government Act. These measures consisted in sending a survey party with interpreters to explain to them the provisions of law and to urge them to make their application for the land to which they were entitled, draft the application for them in proper form, make the
396 survey for them without charge, and thus protect them in their rights, and these claims which have been instituted in Loakan have been made possible by this benevolent policy on the part of the Government. Otherwise these men would have lost the land to which they were entitled. Of course it goes without saying that a great vacant tract of public land on which Mateo Carantes' grandfather may have pastured cows does not belong to him, and he cannot get title to it. It is my duty to see that the public lands which have been reserved within the town site of Baguio are not trespassed upon, and possibly as a result of that the Igorotes may have thought that I was keeping them off this land because I wanted it myself. They are very ignorant people, but there is no way in which land can be obtained within the town site of Baguio which is not a public way. It cannot be bought at private sale until it has been two times offered at public auction, and no land has in point of fact been sold privately, and in case of a private sale all documents pertaining to it would be of record.

Q. I will call your attention to the piece of land occupied for a

time by your nephew in Benguet, and will ask you to state to the Court whether or not you owned that land, or owned any interest in it, now or at any time?

A. Some time in the early part of the year 1904 my nephew built a grass house on what he believed to be unoccupied unclaimed public land at Loakan. This lay in a general way between the
397 abandoned Benguet road and the new road. It touched the former road which was completed to Loakan to my certain personal knowledge in June of 1901, it did not extend to the other road. I have never owned that land nor had an interest in it, direct or indirect. It was and is unoccupied public land belonging to the Government of the United States.

Q. I will ask you to state when your nephew came to the Philippine Islands?

A. In November or December, 1902.

Q. How long had this Benguet road been completed to Loakan before your nephew came to the Philippine Islands?

A. I cannot say, but about the middle of June, 1901, I made my first inspection trip through Northern Luzon, and I inspected this road, which at that time had reached a point far beyond Loakan, probably it had reached Loakan several months before, but it had reached Loakan at all events the middle of June, 1901.

Q. I will call your attention to the testimony of Mateo Carantes in regard to some tunnel, or excavation, or something of that character, which had been placed upon this land, and will ask you if that was done by you, or under your direction, or did you have anything to do with it, and to explain what it was to the Court.

A. There is a hole, I should say eight or ten feet deep, in a bank of red clay on the land in question. There is about as much prospect of finding a mine there as there would be of finding an iceberg in the desert of Sahara, there is no rock inside, there
398 is nothing but mud. I do not know who made the hole. Inexperienced prospectors have dug holes all over Benguet. That hole was there the first time I ever went down to Loakan.

Q. I will ask you to state to the Court whether or not you have inspected any mines in the province of Benguet with Mr. M. A. Clarke, or ever did any mineral prospecting there with him of any character?

A. I never even took a walk with Mr. Clarke in Benguet, and never made any mineral investigations in his company.

A. I will call your attention to the testimony of the witness Emigdio Octaviano, in which he stated that you told him that you owned an interest in some land and some cattle in Benguet, and will ask you to state whether or not that is true, and if not to please explain to the Court what connection you ever had with any cattle in Benguet or the ownership thereof?

A. I never told Emigdio Octaviano, or any one else, that I owned land in Loakan. Emigdio Octaviano, like every one cognizant of the facts, knows that I own a house lot at Baguio, which lot I purchased at public auction, and on which I built a house, where I always live when I go to Baugio. I have owned cattle in Benguet

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to the extent of two, the first one I got for milk lived two weeks, and the second one I still have to work on my place. I have never owned any other cattle, nor have I ever said to any one that I did.

399 Q. I will ask you to state to the Court whether or not Mr. Hammill ever bought any land or property of other character for you in Mindoro, or anywhere else, or if you ever had any business dealings with Mr. Hammill?

A. I have never had any business relations with Mr. Hammill of any sort whatsoever. I have never given him any money to expend *to* me. I have never authorized him to buy any land for me, or requested him to get any information concerning land for me. The only piece of land I ever tried to buy I got, namely, my house lot in Baguio.

Q. Do you think of anything else you desire to say Mr. Worcester?

A. Nothing.

Cross-examination by Sr. SALAS:

Q. Will you state, Mr. Worcester, what length of time you have known Emigdio Octaviano?

A. Probably since I went to Benguet in the year 1900. I recommended him for appointment as Provincial Secretary, and I directed the Governor of the Province to obtain his resignation, with the understanding that if he did not resign he would be removed, and he did as a matter of fact present his resignation about a year ago.

Q. Is it not true that at the beginning you were very friendly with Emigdio Octaviano?

A. No, I have never been a great friend of Emigdio Octaviano. I have had a very great admiration for some of his character-

400 istics, and at the time he was recommended by me for appointment as Provincial Secretary I believed he would make a very useful official, and he was for some time.

Q. Do you not remember how many letters you have written to Emigdio Octaviano, and which show the intimate relations which existed between you and him?

A. I have written to Emigdio Octaviano repeatedly.

Q. Do you not remember that some of these letters were in relation to your private affairs in Benguet?

A. I have no recollection of interesting him in my private affairs.

Q. Are you positive about that?

A. If the gentleman will specify more specifically what he means by my private affairs, perhaps I can answer him better.

Mr. SOUTHWORTH: I submit that if the witness is to be examined in relation to what he wrote, that he is entitled to see the letter before being questioned about it.

The COURT: There is no doubt about that, but he may not want to wait to see it. I do not know what it has to do with the trial of this case, or anything about it.

Q. How many letters have you written, more or less, to Emigdio Octaviano in relation to the Igorots and the photographing of them?

Mr. SOUTHWORTH: Objected to.

The COURT: Objection sustained.

401 Sr. SALAS: Exception.

Q. Can you state how many times you have been in company with Emigdio Octaviano in Benguet?

A. I have not the slightest idea.

Q. Have you been with him many times in the pueblo of Trinidad?

A. Several times, yes.

Q. Have you been along with him on the road that leads to Trinidad?

A. I have ridden to Trinidad with him, yes.

Q. That time when you met Emigdio Octaviano and spoke about land and about cattle, can you repeat, more or less, what you told him at that time?

Mr. SOUTHWORTH: Objected to on the ground that the witness has not stated that he met Emigdio Octaviano and talked with him about land and cattle.

The COURT: Objection sustained on the ground that it presumes a condition which is not shown from the evidence.

Sr. SALAS: Exception.

Q. You have stated that you never spoke to Emigdio Octaviano in regard to this land?

A. I have stated that I never said to him or anybody else that I owned land in Loakan. I have often spoken to Emigdio Octaviano about my house lot in Baguio.

Q. Are you positive and sure that you never spoke to Emigdio Octaviano about the land at Loakan?

A. About what land at Loakan?

402 Q. About the land that appears in the notice Exhibit D. 19, as "hacienda de Worcester?"

A. I never spoke to him about any land of mine at Loakan.

Q. Nor even about land at Loakan, without reference to whom it belonged?

A. I think it is very likely. I might have asked him about different owners and claims at Loakan with a view to helping the owners get their titles; that is the only interest I have in Loakan, to help the Igorots get the land they were entitled to, and at the same time prevent them from getting land which belonged to the Government.

Q. If I remember correctly you have stated that your nephew occupied some land at Loakan?

A. I said that he did occupy some land at one time.

Q. Did you not speak to Emigdio Octaviano in regard to that land which is said to belong to your nephew?

A. I could not say whether I spoke to him about that land or not. I never told him that the land belonged to me, or that the land belonged to my nephew.

Q. How is it that you remember that, when you say you do not remember having spoken anything about land?

A. I did not say I remembered it. I have no recollection of having had any conversation with Emigdio Octaviano at all, but it is entirely possible I may have referred to that land my nephew was on. The question as to whether I could remember as to whether having mentioned that land is a very different question as to whether I ever said I owned it, or that he owned it. I may have
403 said I thought it was good land or bad land. I might have asked if any Igorots claimed it, there are a hundred things I might have mentioned about it without remembering them now. I would not swear I never mentioned that land to Emigdio Octaviano, the probability is that I did, but I never told him that I owned it, because I knew then as I know now that the owner of that land was the Government of the United States.

Q. How do you remember so well that you have not stated to Emigdio Octaviano that you were the owner of that land?

A. I do not lie frequently enough myself so that it would make a strong impression on me if I did. Had I told Emigdio Octaviano that that was my land it would have been a lie.

Q. What was the occupation of your nephew when he arrived in the Philippine Islands?

A. I remember the occupation for which he came here was to gather and ship to certain florists in the United States the bulbs of a plant known as "lilias benguetense."

Q. Can you state how long your nephew continued in that employment?

A. Not exactly, I think probably three years, it continued until the demand for the plants ceased, or became small.

Q. And has your nephew any land at Loakan at the present time?

A. No sir.

404 Q. Or at any other place in Benguet?

A. No, not to my knowledge.

Q. And in Nueva Ecija?

A. What do you want to know about Nueva Ecija?

Q. If your nephew has some land there?

A. No, he has not, he has applied to rent some and the survey is not completed, or the map is not made.

Q. Do you mean to say that your nephew has no land at Mataz na Cahay?

A. That is precisely what I mean to say, the gentleman has understood me correctly. My nephew is occupying a piece of land there, but it does not belong to him.

Q. On what condition then does your nephew occupy that land?

A. What do you mean, I do not understand your question?

Q. Under what manner does your nephew occupy that land?

A. In the same manner anybody may occupy land he desires to secure, the same manner that most of the people, as a matter of fact, in the Philippine Islands, occupy the land upon which they live, with this difference, that my nephew is trying to lease it and most of the people continue to occupy the land without making any payment to the Government.

Q. You have stated that when you were about to go to Mataz na

Cahay you spoke to Sr. Buenaventura about renting a horse, and that the only thing you asked him was "how is the hacienda?"

A. I think you are mixing up what was said when talking
405 to the cook and what was said when talking to Sr. Buenaventura. I never said anything to Sr. Buenaventura about a horse.

Q. What I desire to ask you is, whether upon going on that occasion you made the trip officially or made it as a private person?

A. I did not gather that meaning from your question. I do not know that I gave any testimony on the subject of whether I went officially or privately.

Q. That is what I want to know now from you, whether your trip was official or private when you went to Mataz na Cahay?

A. It was a private trip.

Sr. SALAS: That is all.

Cross-examination by Sr. FERRER:

Q. You have stated that you had no business relation with Mr. Hammill. Did you have other relations with him?

A. What do you mean by other relations?

Q. Relations which were not commercial?

A. Mr. Hammill has come to my office to consult me as to whether I believed that the alleged titles he had bought of natives in Mindoro were good for anything, and I told him that I did not think they were.

Q. Have you been on that land he bought at Mindoro?

A. I have been at Mr. Hammill's house at Mindoro?

Q. In what place?

A. In a place called Chicago.

406 Q. How many times have you been there?

A. I could not say, three as I remember.

Q. Is it not true that on one of these occasions you went to Chicago you ascended the Baco river, and that on that day there was an inundation?

A. Yes, there was a flood in the river on the occasion when I went up it in November, 1904. I have also been up it in Spanish times when it was in flood.

Q. Is it not true that on this occasion you ascended the river when it was in flood, you were in a banca paddled by several natives?

A. Each time I have been up the Baco river I have gone in a banca which was paddled by various persons, as the walking is not good in the river and there is no steamer to travel on.

Q. You do not know these persons who were paddling the banca?

A. It would be entirely impossible for me to identify the numerous banca men I had on the Baco river in Mindoro.

Q. That is what I want to know, you do not know.

A. I have answered the question.

Q. When you arrived at New Chicago on one of these occasions that you went there, is it not true that you did not meet Mr. Hammill there?

A. I do not remember that I ever met him there but once.

Q. What did you do there when you went to New Chicago?

A. When?

407 Q. On the occasions you went there.

A. Is it desired that I should give a history of my trips up the Baco river in cross-examination in rebuttal, when I never testified concerning them. I desire to know whether the Judge wishes it, if he does I will give it.

Mr. SOUTHWORTH: Objected to.

The COURT: Objection sustained, as to giving a history of the trips made there.

Q. Is it not true that on one of the occasions you went to Chicago, you saw the plantations that were there?

A. I have seen what could be seen from the river in a banca going up. I once hoped to see some plantations of Mr. Hammill when I got there, but I came to the conclusion after looking for them that they existed in his mind rather than on the ground, as *they* did not seem to be any there; if he ever had a plantation there I never could find it.

Q. My question is whether or not you examined the plantations at New Chicago?

A. There are none there as far as I know.

Q. My question is, can you also get through the land in New Chicago from the back?

A. I do not know what land Mr. Hammill has in New Chicago. The river at Chicago forks, there are two main branches and one small branch. I have been up them all and I do not know where Mr. Hammill's land is, or whether I may have gone by it or not.

408 Q. I mean that land at Chicago.

A. There is no land at Chicago that I know anything about. The place called Chicago is a house, a nipa house as far as I know, and had a board up there with Chicago written on it. I do not know what goes with that name. I have seen the board with the name on it. There was no map of the place and I do not know where it begins nor where it ends.

Q. Is it not true that you upon arriving in that place you call Chicago, measured the distance from the house to the river side?

A. Great Scott! No, any man with any ordinary common sense could stand and look at it and see how far it was.

Q. You measured it by footsteps?

A. I looked at it and could tell how far it was, anybody who knew a yard could tell about how far it was, it would be foolish to measure it.

Q. So you mean to say you did not even measure it by footsteps?

A. The answer to that question is, no, I did not.

The COURT: You must ask intelligent questions, Sr. Ferrer.

Sr. FERRER: That is all.

Redirect examination by Mr. SOUTHWORTH:

Q. Do you know the signature of Governor Pack?

A. I do.

Q. I will hand you a document, marked for identification Exhibit I., dated July 5th, 1905, and will ask you to state whether
409 or not the signature affixed to that document is the signature of Governor Pack?

A. It is.

Mr. SOUTHWORTH: I offer this document in evidence as Exhibit I.

The COURT: What is the object of this?

Mr. SOUTHWORTH: To rebut the statements made in regard to Mr. Worcester's taking photographs of the Igorots.

The COURT: I do not think it proper to put Mr. Worcester on trial. As I have said before the Government is not on trial and Mr. Worcester is not on trial, and if objections were made to it as immaterial, the objection would be sustained.

Sr. AGONCILLO: I object to the introduction of this document as immaterial.

The COURT: Objection sustained.

Mr. SOUTHWORTH: I now offer in evidence a document, marked for identification Exhibit J., to show the value of the property purchased by Mr. Worcester for the city.

Sr. AGONCILLO: Objected to as immaterial and incompetent.

The COURT: Objection sustained.

Mr. SOUTHWORTH: That is all we have to offer.

The COURT: The case is closed.

Sr. AGONCILLO: I ask to have it appear in the record that the accusing witness was present during the trial.

The COURT: The motion put in that form is denied, on the ground that there is no accusing witness.

I certify that the above is a correct transcript of shorthand
410 notes taken by me of the proceedings in Criminal Case No. 4295, entitled "The United States vs. Teodoro M. Kalaw et al.," in the Court of First Instance for the City of Manila, on December 5th, 7th, 8th, and 10th, 1908, and January 11th, 12th, 13th, 14th, 20th and 21st, 1909.

(Signed) WM. M. BARRINGTON,
Official Reporter.

411 PLAINTIFF'S EXHIBIT "A."

Editorial, Entitled "Birds of Prey," Published in the Newspaper "El Renacimiento" October 30, 1908.

"Birds of Prey.

On the surface of the globe some were born to eat and devour, others to be eaten and devoured.

Now and then the latter have bestirred themselves, endeavoring to rebel against an order of things which makes them the prey and food of the insatiable voracity of the former. At times they have been fortunate, putting to flight the eaters and devourers, but in the

majority of cases they did not obtain anything but a change of name or plumage.

The situation is the same in all the spheres of creation: the relation between the ones and the others is that dictated by the appetite and the power to satisfy it at the fellow-creature's expense.

Amongst men it is very easy to observe the development of this daily phenomenon. And for some psychological reason the nations who believe themselves powerful have taken the fiercest and most harmful creatures as emblems: it is either the lion, or the eagle, or the serpent. Some have done so by a secret impulse of affinity and others in the nature of similation, of infatuated vanity, making themselves appear that which they are not nor ever can be.

The eagle, symbolizing liberty and strength, is the bird that has found the most adepts. And men, collectively and individually, have desired to copy and imitate the most rapacious bird in order to triumph in the plundering of their fellow-men.

There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire.

Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

Presenting himself on all occasions with the wrinkled
412 brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the protext of public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people.

Such are the characteristics of the man who is at the same time an eagle who surprises and devours, a vulture who gorges himself on dead and putrid meats, an owl who affects a petulant omniscience,

and a vampire who silently sucks the blood of the victim until he leaves it bloodless.

It is these birds of prey who triumph. Their flight and their aim are never thwarted.

Who will detain them?

Some share in the booty and the plunder. Others are too weak to raise a voice of protest. And others die in the disconsolating destruction of their own energies and interests.

And then there appears, terrifying, the immortal legend:

Mane, Tecel, Phares."

413 PLAINTIFF'S EXHIBIT "B."

Article Published by the Newspaper "El Renacimiento" October 27, 1908, in Its "Gossip" Column, as Follows.

"They say that some persons advocate that a business man be appointed as member of the Honorable Philippine Commission. But it is also said that there is already a business man in that legislative body, not counting Commissioner Forbes who, besides being a distinguished clubman and brilliant sportsman, is a great expert in railroad matters, navigation, commerce, etc. This must be true because the man from Boston is absent and nevertheless * * * there is something rotten in the Ayuntamiento. What smells rotten is the meat of the twenty-one fat cows of Lack & Davis, W. Dean & Co., Limited."

414 PLAINTIFF'S EXHIBIT "C."

Article Published in the Newspaper "El Renacimiento" October 26, 1908.

"Violation of the Ordinances—Authorities Implicated—Have We Eaten Infected Meat?

This morning, contrary to all expectations, the Municipal Board of Manila, whose ordinances seem to apply only to drivers and other common folk, was struck by a sense of justice, and denied the petition of Lack & Davis for a privilege.

Several days ago we published something about a certain violation of a City ordinance which the City Fathers preferred to cover up rather than incur the wrath of a Secretary of the Interior under whose authority the violation had been committed.

In the Bay, on board a ship, quite a number of heads of cattle had been slaughtered and the meat was sent to the market in violation of the rules governing the importation of foreign cattle.

Last Thursday Mayor Roxas presented a motion to the Municipal Board calling for the prosecution of Lack & Davis, the importers of said cattle, for violation of the ordinance relating to the slaughter-

house. Lack & Davis adduced in their favor the authorization of Mr. Worcester and Mr. Nelson of the Bureau of Agriculture. These names having been invoked, members McDonnell, Welch and Wylie objected to the Roxas motion.

Roxas asked whether a letter from a Commissioner could justify the violation of a City ordinance. Welch answered that it could not but that it would do no good to antagonize Worcester.

It clearly appears that Mr. Worcester is the one responsible for the violation, but, he being the Secretary of the Interior, the Board preferred to ignore the matter. The only action taken was to appoint Welch as a committee of investigation. The result of the investigation can be safely predicted.

Late on Saturday Lack & Davis presented a petition to the Board for authority to slaughter certain cattle on board without payment of the regular fees. The petition was referred to Mayor Roxas for an opinion and the Mayor, after hearing the parties, recommended that the petition be denied but suggested, however, that the cattle might be brought directly to the slaughter-house, provided the Bureau of Agriculture had no objection.

415 The Mayor's report was submitted to the Board this morning. Considering what had occurred on Thursday, it looked as though the motion would be rejected to please Lack & Davis and the Insular authorities who shielded them. The motion, however, was carried in a moment of justice. * * *

But, will the Bureau of Agriculture give its permission?

The slaughtering which gave rise to the incident of last Thursday was not precisely for the purpose of avoiding the payment of the regular fees. If such had been the object, there was no necessity for the importers to apply to such a high man as Worcester. But there is something more serious.

Is it true that in the last shipment, the one unlawfully slaughtered, there were some cases of plague?

If this is true, then it would be very easy to ascertain the real object; to avoid a strict quarantine during which more cattle would have probably died, the animals were slaughtered on board. The importers have thus only lost the animals which had already died. But, who will assure us that the rest of the cattle, the cattle which were actually slaughtered, were in good condition?

When they have gone to such an extreme, it is to be presumed that the importers have not stopped to make a careful investigation in the interests of the public by separating the infected animals from the healthy ones. In violation of all sanitary rules, and through the benevolence of the corresponding authorities, infected meat has undoubtedly been sold in the Manila market.

We will see what the Bureau of Agriculture will do with the shipment which is expected to arrive tomorrow morning and for which authority to kill the cattle in the Bay has been requested.

The Custom House authorities too must have something to do with this matter unless they have the same reasons and take the same position in regard to it as did Mr. Worcester and Dr. Nesom.

The shipment was of live cattle, to be imported into Manila. But

instead of this, dead cattle is what they brought in. Have the Custom House authorities failed to notice it? This would be the limit!

How can we expect to put this City into a sanitary condition when the laws and regulations governing importation and sanitation are so boldly violated, whenever it suits business, by the mere whim and fancy of the very authorities called upon to see to the enforcement of the laws and ordinances?

Nothing will happen to Lack & Davis because they are shielded by men high up. The Prosecuting Attorney will not interfere with them, notwithstanding the evident violation committed.

The all important thing is to please Worcester!"

416 PLAINTIFF'S EXHIBIT "E."

In reply please refer to No. 7733A44.
N.-K.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
DEPARTMENT OF THE INTERIOR,
BUREAU OF AGRICULTURE, MANILA, *October* 20, 1908.

GENTLEMEN: The acting chief veterinarian has reported to me that there arrived by the S. S. "Rubi" this morning 41 head of cattle from the port of Hongkong, and that this shipment is infected with foot-and-mouth disease. In accordance with the provisions of Act 1760 and General Orders No. 10 of this Bureau, the landing of these cattle is prohibited. However, in accordance with verbal approval given by the Honorable, the Secretary of the Interior, you will be permitted, under such conditions as the Collector of Customs may impose, to discharge these cattle from the ship into a lighter and then hold them in the bay until slaughtered, or otherwise disposed of, in accordance with subsequent approval by this bureau. You will be permitted to land only the meats and hides derived from these animals, and must dispose of all offal without landing same, under such conditions as may be imposed by the Collector of Customs and sanitary authorities of the port of Manila.

Respectfully,
(Signed) C. M. CONNER,
Acting Director.

Messrs. Lack & Davis, Manila.

(Here follow Exhibit "F" and Lease Application, marked pp. 417-419.)

MAPS TOO LARGE FOR FILMING

420 PLAINTIFF'S EXHIBIT "H."

2119-A6.

(Copy.)

Department of Assessments and Collections, City of Manila.

MANILA, P. I., *September 15th*, 1904.

Honorable Dean C. Worcester, Secretary Department of the Interior, Manila, P. I.

SIR: I have the honor to report that, complying with your request, I have examined that certain tract of land, referred to in the accompanying letter addressed to Major Carter, and belonging to Mr. George C. Sellner.

I have also examined the assessment rolls of this office with reference thereto. A great portion of said tract of land lies very low and will require much filling to raise it to the street grade as established by Calle Padre Faura. It was probably for this reason that the apparently low assessment of 25 cents, gold, per square meter was placed upon the larger portion of it.

With the proposed boulevard, which I understand is practically assured, the property has a prospective value it did not have at the time said assessment was made. If the property was to be re-
421 assessed today, the valuation would be considerably increased, probably, for it is a fact that real estate values in this district have appreciated materially within the past year.

The 30 meters deep frontage on Calle Padre Faura are now assessed at $5,610, gold. Take the remaining 26,574 meters at 50 cents per square meter, would amount to $13,287, or a total valuation of $18,897, gold. Taking the whole situation into consideration I would regard that figure as a conservative valuation now, and taking Mr. Sellner's figures, as to superficial area and street frontages, as a basis for computation, and with the boulevard a reality, it would be a difficult matter to keep within Mr. Sellner's offer, in assessing it for taxation.

For instance, 400 lineal meters on the boulevard, 30 meters deep, or 12,000 square meters, could not be consistently valued at less than $2, gold, per square meter, or $24,000; 55 lineal meters on Calle Padre Faura, 30 meters deep, or 1,650 square meters, at $2 per square meter, same as now assessed, $3,300, leaving 15,474 square meters of interior land, at, say, 50 cents per square meter, equals $7,737—a total of $35,037, gold.

Letter and plat returned herewith.

Very respectfully,

(Signed) A. W. HASTINGS,
City Assessor and Collector.

A. W. H./K.

cb.

1st Ind.—Department of the Interior—September 22, 1904.—Respectfully referred to the Acting Executive Secretary, for
422 presentation to the Commission and consideration in connection with other papers on this subject previously forwarded.—Dean C. Worcester, Secretary of the Interior.

2nd Ind.—Executive Bureau—September 22, 1904.—Respectfully submitted to the Philippine Commission, in accordance with the preceding indorsement.—F. W. Carpenter, Acting Executive Secretary.

r.

JANUARY 21, 1909.

I hereby certify that the foregoing is a true copy of the original.
(Signed) W. C. G. WHITAKER,
Stenographer.

423 DEFENDANT'S EXHIBIT "11."

Article Published in the Newspaper Cablenews-American, October 23rd, 1908.

"Death on Land or Water—Beef Should Be Killed Where?

A motion made by Alcalde Roxas, yesterday, at the Municipal Board, that Messrs. Lack and Davis be prosecuted for killing cattle outside the matadero was tabled by a three-to-one adverse vote. Alderman Welch moved and it was resolved that the matadero committee ascertain why the well known purveyors of meat have been breaking the city's slaughter laws. According to information given to the board by City Assessor and Collector Cromwell, Commissioner Dean C. Worcester told the Director of Agriculture and the Director of Agriculture told George Lack cattle might be killed in the bay. It being deemed desirable to provide against future breaches of the city's ordinances without unnecessarily antagonizing the insular authorities, the committee has been directed to take up the matter with Mr. Worcester and Dr. Nesom. And in the meantime, City Assessor and Collector Cromwell has the money, P104, paid by Lack and Davis for the matadero fees.

Mr. Cromwell explained that the matter had come up before when a resolution was passed adjusting that incident. The board agreed to ignore the infringement in that instance, but the resolution advised the assessor that no precedent was established. In this second case, twenty head of cattle had been slaughtered in the bay, and if this was allowed to proceed the city might expect to face a considerable reduction in the matadero fees.

Alcalde Roxas: 'I think our action should be to prosecute Messrs. Lack and Davis for violation of our ordinance.'

Mr. Welch: 'Let us first see where we stand. Has any explanation been offered?'

Mr. Cromwell: 'Yes, Messrs. Lack and Davis showed me a copy of a letter in which the Secretary of the Interior directed the Bureau of Agriculture that this be allowed. Twenty animals were

slaughtered yesterday and were introduced into the city markets without any inspection whatsoever.'

Alcalde Roxas moved that the case be referred to the prosecuting Attorney.

Mr. Welch asked if Lack and Davis had a permit signed by the Secretary of the Interior.

424 Mr. Cromwell: 'No. But they had a written permit from the Director of Agriculture given, I understand, on the authority of the Secretary of the Interior.'

Mr. Welch: 'We had better have a copy of that letter before taking action. There is probably some misunderstanding which can be adjusted in a few minutes.'

Mr. Cromwell said it was to that end he had brought up the matter. He had a suggestion to offer which would, most likely, satisfy all parties. The cattle killed on the bay meant additional expense to firms like Lack and Davis, and infringement of the ordinance could be obviated by declaring the matadero a quarantine station. All the necessary facilities were at hand there. There was proper isolation, and cattle fit for food consumption although part of a shipment refused landing on account of hoof or hide infection could be brought ashore at the hour for killing and promptly slaughtered. If the board antagonized the trade it might be that such cattle would be slaughtered outside the three-mile limit and then the city would lose the fees.

Mr. Welch said there was no question about the violation of the ordinance, but he thought it was better for the board to provide adequately for the future by going gently to work and straightening the matter out than by standing on their dignity, complicating things, and arousing the ire of the intervening insular officials. Mr. Cromwell had told them that Lack and Davis had a written permit which they had taken as authority. Now, it was not desirable that they should rush into court with an attempt to soak Lack and Davis and then have this letter flashed in their face.

Alcalde Roxas put it to his learned brother, Mr. Welch (also a lawyer) would a letter of a commissioner be considered sufficient to justify the breaking of one of their ordinances?

Mr. Welch said he did not suggest that the letter was a competent authority, but he did put it to alcalde what was the use of getting Commissioner Worcester's back up? It would be much better to provide for the future than to gain a minor point in court.

Mr. McDonnell said that was his view and he debated the question with the alcalde, who still stuck to his guns, demanding that the papers *be* sent to the Prosecuting Attorney with a direction to investigate and prosecute.

Mr. Welch said he would accept the investigation part of the motion, but not the direction to prosecute.

Alcalde Roxas: 'Why not? Why should we stop short in this case and not in others? We do not refrain from enforcing the strict letter of the law in other cases.'

Messrs. McDonnell, Welch, and Wylie all three immediately corrected the alcalde on this point. Just a few minutes before they

had refrained from prosecuting a Filipino who had violated one of the building ordinances under an authority improperly given. The two cases were on all fours.

425 Alcade Roxas: 'We will never have control of our affairs by going on in this way.' He declined to withdraw his motion and nobody seconding it, it was recorded on the minutes and 'tabled.'

Mr. Welch's suggestion was then acted upon on the motion of Mr. McDonnell. The matter will be gone into with the parties concerned by City Engineer Wylie, committee on mataderos."

426 DEFENDANT'S EXHIBIT "12."

G./F.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
DEPARTMENT OF THE INTERIOR,
BUREAU OF AGRICULTURE, MANILA, *July* 18, 1908.

In reply please refer to No. 7733A22

SIR: Your letters regarding the importating of cattle from Ui-Haw at hand.

Diseased cattle embarked at Hongkong can not be landed in the Philippines. At present Hongkong is the only port so restricted. It is believed that 3 shipments would be all that could be brought from Ui-Haw, as the cattle from that place would likely be diseased.

Your attention is invited to rule 2 of General Order No. 10, a copy of which is attached.

Very respectfully,

(Signed) C. M. CONNER,
Acting Director.

(Signed) By FRANK A. GEARHART,
Acting Chief Veterinarian.

Sr. Ricardo Aguado, Manila, P. I.

427 DEFENDANT'S EXHIBIT "13."

Article Published in the Newspaper El Mercantil, October 23, 1908.

"Gossip in and About Government Headquarters.

Not in vain is this the true and real City Hall—our former Town Hall. Municipal matters are quite in vogue today. We have in the first place the matter of the elections, which is still 'sub judice." (1)
* * *

[1] The omitted portion of the article has no reference to the slaughtering of the cattle in question and has no relation to the case in which it was offered and admitted in evidence.

And in the meantime the Municipal Board continues to be a mere bureaucratic dependency of the Department of the Interior. The edifying incident which took place during yesterday's session proves this conclusively.

The American contractors Lack & Davis, in violation of the express provisions of our municipal ordinances and in order to save the cost of transportation, killed in the Bay twenty-one head of cattle without payment of the regular slaughterhouse fees and without subjecting the meat to the required inspection and examination. As this was the second time that Lack & Davis had committed the same infraction, the City Assessor and Collector, Mr. Cromwell, reported the matter to the Municipal Board.

428 Mayor Roxas, to protect the prestige of his office and that of the corporation over which he presides, suggested that the City attorney be directed to institute proceedings against Lack & Davis for violation of the municipal ordinances.

Mr. Welch, the Chief of the Law Division of the Executive Bureau, who for some reason has been temporarily appointed to the Municipal Board, asked Mr. Cromwell whether Messrs. Lack & Davis had explained their conduct. Mr. Cromwell said that they had, adding that Mr. Worcester, the Secretary of the Interior, verbally, and the Director of Agriculture, Mr. Nesom, in writing, had permitted them to kill the cattle in the Bay. Mayor Roxas then properly replied that the Municipal Board had nothing to do with that and that the gentlemen in question had no power to suspend the operation of a City ordinance. Mr. Welch then said that it would be better to try to avoid a repetition of such incidents in future rather than to have a conflict with the Insular authorities and accordingly proposed that Lack & Davis be required to pay 104 pesos, the amount of the slaughterhouse fees, and told to refrain from doing the same thing again in future without the express authority of the Municipal Board and that Mr. Cromwell call upon Mr. Worcester and Mr. Nesom in order to solve the conflict and avoid its repetition. Mayor Roxas protested and insisted on his former motion but was defeated by the unanimous vote of McDonnell, Welch and Wylie.

429 The Municipal Board thus virtually decided yesterday that the Secretary of the Interior and even the Director of Agriculture can, if they wish, suspend temporarily and executively the operation of a municipal ordinance without a resolution authorizing such suspension and without the knowledge of the Council. Could such an absurd and illegal resolution have been adopted if the two councilmen newly elected by the vote of the people of Manila had already taken their seats in that body?"

430 DEFENDANT'S EXHIBIT "14."

(Duplicate.)

E./B.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
DEPARTMENT OF THE INTERIOR,
BUREAU OF AGRICULTURE, MANILA, *July* 11, 1908.

SIR: In accordance with Rule Two, General Order No. 10, you are hereby given notice that the shipment arriving here by the S. S. "Taming," from Hongkong on the tenth instant, was infected with foot-and-mouth disease and rinderpest.

This shipment constitutes the third consecutive shipment of cattle infected with foot-and-mouth disease to arrive at this port from Hongkong since June 20, 1908.

Landing permits will not be issued in the future for infected shipments of cattle from Hongkong, except for such cattle as may have left that port prior to the receipt of the notice provided for in Section Three of Rule 11, General Order No. 10.

Very respectfully,

(Signed) C. M. CONNER,
Acting Director.

(Signed) Per FRANK A. GEARHART,
Acting Chief Veterinarian.

Sr. José Flameño, Manila, P. I.

431 DEFENDANT'S EXHIBIT "15".

Article Published in the Newspaper El Comercio, October 24th, 1908.

"Municipal Authority a Mockery.

For the recreation and amusement of the taxpayers and residents of this City, we translate the following from the Cablenews-American of yesterday:

'Death on Land or Water—Beef Should be Killed Where?

A motion made by Alcalde Roxas, yesterday, at the Municipal Board, that Messrs. Lack and Davis be prosecuted for killing cattle outside the matadero was tabled by a three-to-one adverse vote. Alderman Welch moved and it was resolved that the matadero committee ascertain why the well known purveyors of meat have been breaking the city's slaughter laws. According to information given to the board by City Assessor and Collector Cromwell, Commissioner Dean C. Worcester told the Director of Agriculture and the Director of Agriculture told George Lack cattle might be killed in the bay. It being deemed desirable to provide against future breaches of the

city's ordinances without unnecessarily antagonizing the insular authorities, the committee has been directed to take up the matter with Mr. Worcester and Dr. Nesom. And in the meantime, City Assessor and Collector Cromwell has the money, P104, paid by Lack and Davis for the matadero fees.

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Mr. Cromwell: 'No. But they had a written permit from the Director of Agriculture given, I understand, on the authority of the Secretary of the Interior.'

Mr. Welch: 'We had better have a copy of that letter before taking action. There is probably some misunderstanding which can be adjusted in a few minutes.'

Mr. Cromwell said it was to that end he had brought up the matter. He had a suggestion to offer which would, most likely, satisfy all parties. The cattle killed on the bay meant additional expense to firms like Lack and Davis, and infringement of the ordinance could be obviated by declaring the matadero a quarantine station. All the necessary facilities were at hand there. There was proper isolation, and cattle fit for food consumption although part of a shipment refused landing on account of hoof or hide infection could be brought ashore at the hour for killing and promptly slaughtered. If the board antagonized the trade it might be that such cattle would be slaughtered outside the three-mile limit and then the city would lose the fees.

Mr. Welch said there was no question about the violation of the ordinance, but he thought it was better for the board to provide adequately for the future by going gently to work and straightening the matter out than by standing on their dignity, complicating things, and arousing the ire of the intervening insular officials. Mr. Cromwell had told them that Lack and Davis had a written permit which they had taken as authority. Now, it was not desirable that

they should rush into court with an attempt to soak Lack and Davis and then have this letter flashed in their face.

Alcalde Roxas put it to his learned brother, Mr. Welch (also a lawyer) would a letter of a commissioner be considered sufficient to justify the breaking of one of the ordinances?

Mr. Welch said he did not suggest that the letter was a competent authority, but he did put it to the alcalde What was the use of getting Commissioner Worcester's back up? It would be much better to provide for the future than to gain a minor point in court.

Mr. McDonnell said that was his view and he debated the question with the alcalde, who still stuck to his guns, demanding that the papers be sent to the Prosecuting Attorney with a direction to investigate and prosecute.

Mr. Welch said he would accept the investigation part of the motion, but not the direction to prosecute.

Alcalde Roxas: 'Why not? Why should we stop short in this case and not in others?' We do not refrain from enforcing the strict letter of the law in other cases.'

433 Messrs. McDonnell, Welch, and Wylie all three immediately corrected the alcalde on this point. Just a few minutes before they had refrained from prosecuting a Filipino who had violated one of the building ordinances under an authority improperly given. The two cases were on all fours.

Alcalde Roxas: 'We will never have control of our affairs by going on in this way.' He declined to withdraw his motion and nobody seconding it, it was recorded on the minutes and 'tabled.'

Mr. Welch's suggestion was then acted upon on the motion of Mr. McDonnell. The matter will be gone into with the parties concerned by City Engineer Wylie, committee on mataderos.'

From the Cablenews-American of today we translate the following:

'Director Nesom of the Bureau of Agriculture has not authorized the killing of cattle outside the city's matadero. Dr. Nesom discussed the matter with a Cablenews representative yesterday, explaining that his concern is strictly confined to the keeping of animal diseases out of the islands, and the stamping out of the disease still among the insular herds.

Dr. Nesom is attending strictly to business, following out the rules promulgated in June of the present year. He realizes that he is undertaking a job that a number of experts have declared to be impossible of fulfilment, but he is still sanguine. He points to the great work that has been accomplished East and West in the United States, and says that so long as no new sources of infection are allowed in, the ultimate possession of ample live stock free from disease in the Philippines is only a matter of veterinary work and time.

It has been found absolutely necessary to protect the Philippine stock from the infected shipments arriving from time — from China ports, particularly Hongkong and this protection is found in the following provision now being enforced against the neighboring colony:

'Whenever three successive shipments arriving in the Philippine Islands from any foreign port prove to be infected with any dangerous communicable animal disease other than anthrax, notice will be given immediately in writing to the local consignee and by cable, if practicable, and when not practicable, in writing to the authorities of such port, that landing permits will not be granted for further shipments from such port containing animals suffering from such disease, save only for shipments which may have actually left such port prior to the receipt of said notice.'

434 The refusal of permission to land infected shipments confronts the consignees with the alternative of returning the beeves like 'coals to Newcastle,' killing them in the bay for food consumption, or dumping them as food for the sharks. The latter choice, however good for the sharks, is bad for the cattle trade. The matter is now being gone into by Mr. Welch of the Municipal Board and a satisfactory solution will probably be arrived at, necessitating, possibly, a revision of the existing ordinance which is interpreted as forbidding shipside slaughter.'

This is what the Cablenews has to say and all we care to add is that the explanations given by Dr. Nesom concerning the slaughtering of the cattle by Lack & Davis bear the same relation to the question under consideration as * * * the other thing bears to the four seasons of the year. The reader will excuse the language, for things have come to such a pass that we cannot deal otherwise with certain * * * gentlemen.

We refer the matter to the Executive, for municipal authority has become a downright mockery."

435 DEFENDANT'S EXHIBIT "16."

* * * * * * *

"The City Assessor & Collector reported the slaughtering of animals in Manila Bay without the intervention of his office. A motion of the President to refer the matter to the Prosecuting Attorney for investigation and, if necessary, prosecution, did not receive a second. On motion the matter was referred to Acting Member Welch for investigation and recommendation."

* * * * * * *

MANILA, *January* 11, 1909.

I hereby certify that the above is a true excerpt from the minutes of the Municipal Board of October 22, 1908.

(Signed) H. L. FISCHER,
[SEAL.] *Secretary Municipal Board.*

436 DEFENDANT'S EXHIBIT "17."

In reply please refer to No. 7733.A45.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
N.-K. DEPARTMENT OF THE INTERIOR,
BUREAU OF AGRICULTURE, MANILA, *October* 20, 1908.

SIR: I have the honor to advise you that Messrs. Lack & Davis received this morning on board the S. S. "Rubi" 41 head of cattle from the port of Hongkong. This shipment is infected with foot-and-mouth disease and landing permit has been denied them, in accordance with the provisions of Act 1760 and General Order No. 10, Bureau of Agriculture. However, with the verbal approval of the Honorable, the Secretary of the Interior, I have given permission for the discharge of the cattle into a lighter, on condition that they be slaughtered on board the lighter and nothing but the meats and hides landed, and all offal disposed of in the bay, in accordance with the regulations for disposing of garbage from ships.

Other details as to conditions under which the cattle are to be kept pending slaughter and landing are left to your discretion.

Respectfully,
(Signed) C. M. CONNER,
Acting Director.

Collector of Customs, Manila.

Mr. Jarman:

Permit may be issued to discharge these cattle onto a lighter there to be held under guard until proper documents presented.
(Signed) STANLEY.

437 DEFENDANT'S EXHIBIT "17 A."

PHILIPPINE CUSTOMS SERVICE,
PORT OF MANILA, P. I., 10/20, 1908. 6329

Permission is hereby given the bearer of this Michael —— to discharge onto a lighter 41 cattle ex S. S. Rubi. Same to be held on lighter, under guard, until proper documents presented.
(Signed) C. M. COLTON,
Insular Collector of Customs,
By C. P. JARMAN,
Chief Marine Division.

The following appears on back of this permit:

S. S. RUBI, 10-20-'08.

Discharged onto lighter under guard 41 Head of cattle n/m.
41 Only B/N #7.
(Signed) C. O. BOHANAN, *Insp.*

438 DEFENDANT'S EXHIBIT "18."

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Sd. DEPARTMENT OF THE INTERIOR,
MANILA, *September* 15, 1908.

Mr. Robb, Cabanatuan, Nueva Ecija.

MY DEAR SIR: Sr. Flameño is sending forward by tomorrow morning's train one bullock for my nephew, Mr. Evarts Worcester. I am not sure of the address of my nephew's agent at Cabanatuan and so hesitate to write to him. Would you be kind enough to ask him to receive this animal and either send it to my nephew's place by some thoroughly competent man or to notify my nephew of its arrival so that he will send some one in to take it out?

It is a good animal and ought to be sent out carefully so that it will not get used up on the trip, and to this end plenty of time should be taken for the journey.

I trust you will excuse me for troubling you about this. I think my nephew has given me the name of his agent, but I cannot at this time lay my hands on it.

Sincerely yours,
(Signed) DEAN C. WORCESTER,
ZN.

dcw.

439 DEFENDANT'S EXHIBIT "19."

UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

To the Director of Lands in Manila, P. I., the Municipal Council of Baguio, the President of the Country Club, both in Baguio, Benguet Province, P. I., and to all owners and occupants of the lands hereinafter described, and to all persons having or claiming an interest therein, and to all whom it may concern, greeting:

Whereas the Commanding General of the Philippines Division, under the provisions of section 2 of Act. No. 627 enacted by the Philippine Civil Commission, entitled "An Act to bring immediately under the operation of the Land Registration Act all lands lying within the boundaries lawfully set apart for military reservations, and all lands desired to be purchased by the Government of the United States for military purposes," has notified the Governor-General of the Philippine Islands in due form that by an Executive Order, #22, issued and dated at Washington, D. C., the 23rd day of January, 1907, the lands known as the Military Reservation of Camp John Hay, situated in the municipality of Baguio, Province of Benguet, have been reserved by the President of the United

States for military purposes and has also certified that the
440 titles to said lands are so doubtful that it is impossible to determine who are the true owners of the same, and

Whereas the Governor-General of the Philippine Islands, pursuant to the provisions of said Act No. 627, has notified the Judge of the Court of Land Registration that the property included within the limits of the tract of land hereinafter described has been reserved for military purposes.

Beginning at a stone monument 20 feet—6.10 mts. east from the center of the old Benguet Road and near the point where the road leading to Camp John Hay now starts from the said Benguet Road; and from said point N. 55° E., 527 feet—160.63 mts. to a stone monument; N. 9° W., 729 feet—220.20 mts. to another stone monument; N. 71° 3′ E., 2324.3 feet—708.44 mts. to a stone monument; N. 59° E., 623 feet—189.89 mts. to a stone monument; S. 45° 19′ E., 1369.6 feet—417.46 mts. to a stake; N. 89° 43′ E., 680 feet—207.26 mts. to a stake; S. 58° 22′ E., 1165 feet—355.09 mts. to a stake; S. 60° 57′ W., 444 feet—135.33 mts. to a stone monument; S. 52° E., 3200 feet—975.36 mts. to a stake; S. 21° 54′ W., 5965 feet—1818.14 mts. to a stake; S. 32° 08′ E., 3550 feet—1082.04 mts. to a stake distant 3.5 feet—7.07 mts. from a dead tree and on a straight line from the said tree to the Triangulation Station of Mr. Worcester's Farm. Survey made by the Civil Government; from this point following the last described line N. 81° 37′ W. and
441 4100 feet—1249.68 mts. to a stake distant 20 feet—6.10 mts. E. from the center of the old Benguet Road; from this point along the road to a distance of 20 feet—6.10 mts. E. from the center of a stake to the N. 2° 47′ W. and 2048 feet—624.23 mts. and 20 feet—6.10 mts. E. from the center of a bridge whence a trail starts; from this point following the said trail to a distance of 3 feet—0.91 mts. W. to a stake situated N. 15° 21′ W. and 525.5 feet—160.18 mts. from the last mentioned line; from this point N. 67° 24′ W., 600 feet—182.88 mts. to a stake; N. 13° 07′ W., 1017.5 feet—310.14 mts. to a stake distant 20 feet—6.10 mts. E. from the center of the old Benguet Road; from this point following said road to a distance of 20 feet—6.10 mts. E. from the center of the same to a stake located N. 17° 33′ E., 780.5 feet—237.89 mts. from the last mentioned line; from this point along the road to a distance of 20 feet—6.10 mts. E. from the center of the same to a stone monument found N. 8° 48′ W., 1494 feet—455.37 mts. from the last stake; from this point continuing along the road to a distance of 20 feet—6.10 mts. E. from the center N. 33° 51′ 15″ W., 4343.5 feet—1323.90 mts. to the starting point; measuring in all a superficial area of 1433 acres—580.0784 hectares more or less. True bearings, distances approximate.

These being the lands which have been reserved for military purposes.

It is ordered that all persons having or claiming any title
442 or interest in any land or building within the aforesaid boundaries must, within the period of six months from the date of this notice, present to this court a petition for the registration of

their title in accordance with the provisions of Act. No. 496 enacted by the Philippine Civil Commission, entitled "An Act to provide for the adjudication and registration of titles to land in the Philippine Islands," setting out the fact that the property is situated within the limits of the reservation, and should they fail to file such petition within the aforesaid period, judgment will be entered against them by default, and all properties, buildings and other improvements belonging to private parties, included within the above described limits, shall be conclusively adjudged public land and no claim not presented in due time shall be considered.

Witness the Hon. W. L. Goldsborough, Auxiliary Judge of the said Court, this 20th day of April, 1907.

Attested:

(Signed) A. K. JONES,
Clerk of Court.

443 DEFENDANT'S EXHIBIT "20".

THE GOVERNMENT OF THE PHILIPPINE ISLANDS:
Executive Bureau, Manila, ss:

I, Thomas Cary Welch, Acting Executive Secretary for the Philippine Islands, do hereby certify that the annexed copy of File Number 102572-*a*142 has been carefully compared with the original on file in this office, and that the same is in all respects a true and correct copy of such original.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the Executive Bureau to be affixed at Manila, Philippine Islands, this thirteenth day of January, nineteen hundred and nine.

(Signed) THOMAS CARY WELCH,
Acting Executive Secretary for the Philippine Islands.

[SEAL.]

444 MANILA, *November* 4, 1908.

The Honorable the Governor-General.

SIR: Those who have the honor to subscribe this petition addressed to you, all of them residents and merchants of this City, do so trusting in the rectitude of principle and justice which has always characterized all acts emanating from your authority.

We refer, Honorable Sir, to the importation of cattle from Hongkong, which has recently attracted public attention so much, and which has found expression in the different opinions published in the local press.

Confining ourselves, in the first place, to what has happened during these last days, we desire to express our surprise at the last shipment received from Hongkong. We thought that said port had been closed to the cattle trade by virtue of an order issued by the "Bureau of Agriculture", with the approval of the Secretary of the Interior, copy of which we have the honor to attach hereto.

General Order #10, the one we refer to, provides that after the arrival of three infected shipments from the same port, such port shall be closed to the cattle trade, and, this being the case as to Hongkong, we thought that the provisions of the said order, the authority of which we could not doubt, would be strictly enforced, but the facts which are now known to the public show that the order has been violated.

Nothing else can be inferred from the shipments received from Hongkong and consigned to Lack & Davis, as follows: Oct. 7, S. S. "Rubi", 29 head; Oct. 21, 42 head; Oct. 27, S. S. "Zafiro", 41 head; Oct. 31, S. S. "Taming", 56 head; and Nov. 2, S. S. "Yuengsang", 50 head.

Of these shipments, among the 42 head which arrived Oct. 21st there were 21 infected animals, and we take the liberty to assume that some more of them escaped the inspection made on board the vessels which brought them in.

This tends to further justify the suspicion on the part of
445 the people that the inoculations made at Hongkong can inspire no confidence.

We, Honorable Sir, who for many years have been importing cattle from Hongkong, must sincerely say that said cattle, for some time past, have been affected with the same disease which has taken root in this country, and for this reason when General Order #10 was issued, we all agreed that it was to a certain extent just, considering that the "Bureau of Agriculture" had not a "Sanitarium" or quarantine station conveniently situated and equipped so that all suspected shipments of cattle could pass through this sort of clearing house.

The port of Hongkong having been closed by virtue of the said General Order #10, it should continue so closed until such time as the "Bureau of Agriculture" can make provision for a much needed quarantine station where, with the security which the responsible acts of the Government may afford, all cattle coming into the archipelago may be inoculated and observed.

Nothing, be it said with all due respect, would avail to provide a "modus vivendi" in a matter of so much importance as the one under consideration. The speculations of private individuals, who are only moved by personal gain, can afford no protection to the country against the more or less disguised importation of cattle suffering from the various diseases which have decimated our native cattle. The inoculation of cattle and other sanitary requirements cannot and should not, in our opinion, under present circumstances, be entrusted for a moment to any non-official entity. This work should be exclusively under the control of government officials, as we have said before, under the present extraordinary circumstances.

The cattle industry of this country, Honorable Sir, has been in a state of depression for several years on account of the prevalence of disease, and it is in behalf of such industry that we appeal to Your Honor, requesting that all further importations of cattle from Hongkong be prohibited until such time as the same can be effected

with safety by providing an official quarantine station where cattle may be examined upon arrival at this port.

(Signed) JOSE FLAMEÑO,
MODESTO ALBERTO,
PEDRO PICORNELL.
ALDECOA & CO., *In Liq'on,*
By WM. URQUHART.

R. E. E.—R. O.

446 1st Indorsement.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
EXECUTIVE BUREAU,
MANILA, *November* 7, 1908.

Respectfully referred to the Honorable, the Secretary of the Interior. The point of this complaint, so far as I can gather, is that the port of Hongkong was closed in accordance with the announcement that no importations would be received from any port which sent in three infected cargoes of cattle, and those who had connections in Hongkong state that on the faith of this announcement, when the port of Hongkong was closed they established themselves in Saigon and that once established in Saigon and new business relations effected, the port of Hongkong was opened, which left them at a competitive disadvantage with those who had bought cattle at low prices at Hongkong because the port was closed and which they were finally enable to sell in Manila when the port was reopened.

It is also claimed that under rule ten, the importers from Hongkong are given to understand that they will not be allowed to import into the Philippines, dead or alive, any animals which had been sent from the closed port; that there was nothing in the rule from which they could infer that they might bring the animals into the Bay and there slaughter them and sell the meat in Manila; that if there is any modification of the rule of importation, it is claimed that notice ought to be given in order that every body may be able to take advantage of it.

It has further been stated that Dr. Seeley and another veterinarian have gone to Hongkong, and that they are proposing to export cattle from that port to Manila. If this be correct and their judgment as to cattle is to be accepted, the cattle importers suggest an announcement of the fact, in order that they may have an opportunity to take advantage of the situation, due to the knowledge of these veterinarians, and their ability to treat cattle diseases.

(S'g'd) JAMES F. SMITH,
Governor-General.

2nd Indorsement.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
DEPARTMENT OF THE INTERIOR,
MANILA, *November* 13, 1908.

Respectfully returned to the Hon. James F. Smith, Gov-
447 ernor-General.

This communication seems to be based on two errors of fundamental importance.

The first is that the port of Hongkong has ever been closed to the cattle trade and the second is that it has since been opened.

Paragraph three, of Rule two, of the General Order No. 10 of the Director of Agriculture, which covers this subject, reads as follows:

"3. Whenever three successive shipments arriving in the Philippine Islands from any foreign port prove to be infected with any dangerous communicable animal disease other than anthrax, notice will be given immediately in writing to the local consignee and by cable, if practicable, and when not practicable, in writing to the authorities of such port, that landing permits will not be granted for further shipments from such ports containing animals suffering from such disease, save only for shipments which may have actually left such port prior to the receipt of said notice."

It will be observed that this embodies no provision for closing a port but does provide that landing permits will not be granted for said shipments from such port containing animals suffering from such disease, save only, etc.

So far as Hongkong is concerned, what happened was this: After the third shipment of infected animals had been received and due notice had been given that further infected shipments would be denied landing permit, most of the cattle importers at Manila decided that the risk attending the further importation of cattle from Hongkong was too great and made arrangements to get animals elsewhere.

The firm of Lack & Davis saw fit to take the risk, which any other firm might have taken. No ruling was ever requested as to whether or not sound animals coming in an infected shipment might be killed in the Bay and the meat landed prior to the time when Messrs. Lack & Davis requested such a ruling, and certainly no one will contend that the action taken in that case was not advertised with sufficient promptness and thoroughness.

The change in rules complained of does not affect Hongkong in particular and is in no sense an opening of that port, which, in point of fact, has never been closed.

It was found that, as a matter of experience, dealers took advantage of the proviso allowing landing permits for three successive shipments of infected animals, from a given port, and continued to flood the Manila market with diseased animals, moving from one port or another as fast as occasion required. We were informed that there were some forty ports on the China coast which could be utilized in this way.

It was furthermore feasible, under the old rule, to send in two

large shipments of infected animals and then a small shipment of a few head of sound, or even immune, animals so that three successive shipments would not arrive. Under these circumstances it
448 seemed to the Director of Agriculture and to myself that this rule must be done away with, if we were to make any progress in the exclusion of diseased animals from the country and the law, which of itself, prohibits the landing of infected shipments of cattle, unless such landing is specially authorized by the Director of Agriculture, take effect with the proviso, however, that animals belonging to such shipments might be transferred into lighters in the Bay, which would be considered as quarantine stations, and from these lighters might be landed for immediate slaughter only at a point on the beach near the City matadero, provided they were transported to the matadero by the shortest feasible route approved by the Director of Agriculture and immediately slaughtered; such flesh as was fit for human consumption being sold for this purpose, and such flesh and refuse as was not fit for human consumption to be transferred to the crematory and destroyed.

This privilege was extended only in the case of shipments infected with Rinderpest and Foot and Mouth disease; those infected with Anthrax and all effects pertaining thereto being absolutely excluded.

The privilege was extended for the purpose of imposing upon the importers the minimum possible loss consistent with the exclusion of disease from these Islands. It has, of course, had the effect of breaking up the business of shipping diseased animals here by utilizing the expedient of going from port to port, and this is exactly what it was intended to do. It places all ports on exactly the same basis, and this is a result which all fair-minded men ought to applaud.

Attention of the Governor-General is invited to the enclosed copy of a letter which has been today sent to all known cattle importers in Manila.

I have carefully examined the Spanish translation of paragraph 3, of rule 2, and find nothing in it which could justify the belief that the closing of any port to the cattle trade was provided for.

(S'g'd) DEAN C. WORCESTER,
Secretary of the Interior.

449 THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
DEPARTMENT OF THE INTERIOR.
MANILA, *November* 13, 1908.

GENTLEMEN: As you are doubtless aware, the Director of Agriculture and the Secretary of the Interior sometime since reached the conclusion that it would be impossible to eradicate dangerous cattle diseases in these Islands so long as the constant and unrestricted importation of diseased animals was allowed to continue. It was felt, however, that the imposition of restrictions upon the importation of cattle should be made somewhat gradually, in order that those engaged in this business might have time to adapt themselves to changed conditions. This procedure has been followed.

The first step taken was to provide for the quarantining of infected herds after their arrival.

The second was to put in effect a rule providing that, after three infected shipments of diseased animals had been received from a given port, further infected shipments from such port would not be allowed to land.

The third was to adopt a rule which, in effect, prohibited the landing of any infected shipment. In order to prevent the imposition upon importers of heavy loss, which seemed to the Secretary of the Interior and to the Director of Agriculture to be needless, it was provided that animals from such shipments might be disem-
450 barked for immediate slaughter at a point near the matadero, provided they were taken directly to the matadero and killed there; such flesh as was fit for human consumption being sold for that purpose, and such as was not fit for human consumption going immediately to the crematory for distruction, but no animals from infected shipments were to be allowed to land for any other purpose than immediate slaughter until they had first undergone quarantine in the Bay for the full required period and had remained free from dangerous communicable disease.

The only interest which the Government has in imposing these regulations is to prevent the introduction of dangerous communicable animal disease. The Secretary of the Interior believed that the concession above referred to relative to killing in the City matadero might be made without any material danger that, as a result, dangerous communicable disease would be introduced, but he is now informed that certain of the cattle dealers of Manila have expressed the fear that the procedure at present followed under the new rule will result in the introduction of disease and should be discontinued.

If this is to be done, it is evident that the next and only step remaining is to absolutely prohibit the landing of animals belonging to any shipments which are infected on arrival. In other words, it remains only for the Director of Agriculture to refuse to intervene by authorizing the landing of such animals, the law providing that unless he does intervene they may not be landed.

451 While the specific recommendations relative to strictly forbidding the landing of infected shipments were made with reference to shipments arriving from Hongkong, they were, of course, intended to be of general application. As it is clearly evident that the source from which diseased animals came would have nothing whatever to do with the likelihood of their spreading disease after arrival, and the well-known fairness of the cattle dealers of Manila which so often has led to their insisting, most justly, that there should be no discrimination against individual importers or against particular ports, but that all ports and all importers should be treated exactly alike, renders it impossible for me to believe that, in making these recommendations, the persons who made them desired for a moment that discrimination should be made against the port of Hongkong or against the importers who happened to be bringing cattle from that place.

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An early expression of your opinion is requested as to whether this should be done.

Very respectfully,

(S'g'd) DEAN C. WORCESTER,
Secretary of the Interior.

452 DEFENDANT'S EXHIBIT "21."

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Executive Bureau, Manila, ss:

I, Thomas Cary Welch, Acting Executive Secretary for the Philippine Islands, do hereby certify that the annexed copy of Rules and Regulations for the Inspection and Shipment of Livestock, has been carefully compared with the original on file in this office and that the same is in all respects a true and correct copy of such original.

In witness whereof, I have hereunto set my hand and caused the Seal of the Executive Bureau to be affixed at Manila, Philippine Islands, this thirteenth day of January, nineteen hundred and nine.

(Signed) THOMAS CARY WELCH,
[SEAL.] *Acting Executive Secretary for the Philippine Islands.*

Bo.

453 Bureau of Agriculture, Manila.

General Order No. 10.

JUNE 5, 1908.

Rules and Regulations for the Inspection and Shipment of Livestock.

NOTICE.—These rules and regulations are based on Act No. 1760, of the Philippine Commission. Copies of this act in English or Spanish will be furnished by the Director of Agriculture to any one making application for the same, either by letter or in person, at the office of the Bureau of Agriculture, Oriente Building, Manila.

Rule I. Importation and Quarantine.

1. Except as hereinafter provided, all cattle and carabaos imported into the Philippine Islands from other countries where dangerous communicable animal diseases are known to exist, and on route to these Islands for a period of less than ten days, shall be subject to a total quarantine of not less than ten days from the date of embarkation at the port of origin.

2. Until such time as the Bureau of Agriculture may be able to provide quarantine corrals and sheds in which to keep such animals during the period of quarantine, the present arrangement will be continued and they will be quarantined in suitable corrals or sheds provided by their owners.

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3. Nothing in this, or any other of the rules herewith promulgated shall be construed as prohibiting the slaughter of cattle for meat when they are in good health, or as requiring the Director of Agriculture to liberate any animals at the expiration of ten days quarantine, if, in his judgment, dangerous communicable animal diseases are liable to be spread to other points in the Philippine Islands, by permitting the shipment of such cattle or carabaos beyond the port of entry at the expiration of the quarantine period.

Rule II, Importation of Diseased Cattle Prohibited.

1. In view of the fact that during the past year nearly all
454 shipments of cattle to the Philippine Islands from Chinese territory, and especially from the port of Hongkong, have been infected with dangerous communicable diseases, as defined in Section Two of Act No. 1760, notice is hereby given that on and after June 20, 1908, the Director of Agriculture will no longer use the discretion given him by Section Three of said Act to allow the further importation of cattle suffering from such diseases, except as hereinafter provided.

2. Whenever a shipment of cattle arriving in a port of the Philippine Islands from any foreign port proves to be infected with any dangerous communicable animal disease, notice willl be given immediately in writing to the local consignee and by cable, if practicable, and when not practicable, in writing, to the authorities of such foreign port.

3. Whenever three successive shipments arriving in the Philippine Islands from any foreign port prove to be infected with any dangerous communicable animal disease other than anthrax, notice will be given immediately in writing to the local consignee and by cable, if practicable, and when not practicable, in writing to the authorities of such port, that landing permits will not be granted for further shipments from such port containing animals suffering from such disease, save only for shipments which may have actually left such port prior to the receipt of said notice.

4. Whenever any shipment arriving from any place proves to be infected with anthrax, landing permit will be refused for that entire shipment, and for all perishable articles, such as litter, bedding, and other materials which may have become infected and serve as a means of bringing the infection of this disease ashore if permitted to be landed.

Rule III, Shipping Permits Required from Points Declared Infected.

1. In accordance with the provisions of Section Five of Act No. 1760, the Secretary of the Interior has declared the ports of Manila, Iloilo, and Cebú infected with dangerous communicable diseases of animals.

2. Hereafter, during the continuance of such infection, no animals will be permitted to be shipped, driven, or otherwise taken beyond the city or municipal limits of these ports except when ac-

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companied by certificates issued in accordance with said section, as hereinafter provided.

3. The public is warned that Section Four of Act No. 1760 is in full force at all times. Persons violating its provisions do
455 so at their peril.

Rule IV, Shipments from Infected Points Limited.

1. Hereafter, so long as any dangerous communicable animal disease continues to exist in any place which has been declared by the Secretary of the Interior to be infected with such disease, permits for the shipment of cattle from such place to other ports or places in the Philippine Islands will not be issued except when such cattle are destined to a port or place within the Philippine Islands where the Bureau of Agriculture maintains a system of veterinary inspection, or is prepared to establish such a system, or where a general outbreak of such disease is known to exist.

2. The Director of Agriculture will establish and maintain system of veterinary inspection, so far as the force of employees at his command will permit, at any place in the Philippine Islands, upon presentation of satisfactory evidence that the number of animals to be shipped to such place from ports or places declared to be infected with dangerous communicable animal disease, is sufficient to justify him in so doing.

Rule V, Certain Classes of Animals Exempt.

The following classes of animals are exempt from the provisions of these rules and regulations, in accordance with the limitation stated for each class:

1. Cattle which have been permanently immunized against rinderpest or which have had rinderpest and recovered from it, when accompanied by a certificate issued by authority of the Director of Agriculture to this effect, and in which the marks and brands are so given as to enable any one positively to identify each individual animal, shall not be subject to quarantine on account of rinderpest.

2. Animals imported from countries where dangerous communicable animal diseases were not prevalent at the time of embarkation, and which have been on shipboard more than ten days, and found to be free from such diseases, may be transhipped without landing and transported to any part of the Philippine Islands.

3. Animals imported from countries where dangerous communicable animal diseases were not prevalent at the time of embarkation, arriving at a port declared by the Secretary of the Interior to be infected with dangerous communicable diseases of animals may, if found to be free from such diseases on arrival, be transhipped
456 without landing and transported to any part of the Philippine Islands, the provisions of Rule I to the contrary notwithstanding.

4. Animals actually employed in road or field work may be allowed to leave and enter any city, municipality, province, township,

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or settlement where dangerous communicable animal diseases have been declared by the Secretary of the Interior to exist, whenever in the opinion of the Director of Agriculture they can be permitted to do so without danger of contracting and spreading such diseases, and under such rules as he may prescribe.

5. Native cattle shipped from one port or place to another within the Philippine Islands, when free from dangerous communicable animal diseases, and so handled as, in the opinion of the Director of Agriculture, to prevent them from contracting and spreading such diseases, shall not be required to be certified by the Director of Agriculture.

Repeal of Orders in Conflict.

The livestock quarantine order issued by the Secretary of the Interior on November 27, 1907, General Order No. 9 issued by the Director of Agriculture on April 30, 1908, and all other orders or parts thereof which are in conflict with these rules and regulations, are hereby repealed.

G. E. NESOM,
Director of Agriculture.

Approved:
DEAN C. WORCESTER,
Secretary of the Interior.

457 DEFENDANT'S EXHIBIT "22."

Excerpt from the Minutes of the Municipal Board of April 10, 1908.

* * * * * * *

"Major Tos. L. Hartigan appeared before the Board and, on behalf of Judge Wm. J. Rohde, offered to sell to the City 100,000 square meters of land on the Estero de San Antonio de Abad, Malate, at PO. 37½ per square meter. After discussion in view of the recommendations of the Park Committee the following resolution was passed, all members present voting aye:

"Resolved, That the Municipal Board hereby accept the offer of Wm. J. Rohde to sell to the City 100,000 square meters of land, bounded on the west, north and east by the Estero de San Antonio de Abad and on the south by the property of Nuestra Señora de Guia, at PO. 37½ per square meter, and,

"Be it further resolved, That the Disbursing Officer of the Municipal Board is hereby authorized and directed to pay to Wm. J. Rohde the sum of P20,000 from the funds appropriated by Act No. 1727 for "bridges, esteros, parks and streets," upon the execution of the necessary documents and the balance, P17,500, during the fiscal year 1909."

* * * * * * *

Certified Copy.
(Signed) H. L. FISCHER, [SEAL.]
Secretary Municipal Board

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458 DEFENDANT'S EXHIBIT "23."

Excerpt from the Minutes of the Municipal Board of August 5, 1908.

The Committee on Finance & Taxation returned the offer of Judge Wm. J. Rohde to discount six per centum the balance of P17,500 for land purchased from him in Malate, provided immediate payment be made, with a report stating that the Auditor will approve the acceptance of said proposition and will honor the warrant, duly authorized by the Board, for the net amount, and recommended that the proposition be accepted. Upon motion the following resolution was passed, all members present voting aye:

"Resolved, That the Disbursing Officer of the Municipal Board be, and he hereby is, authorized and directed to pay Wm. J. Rohde the sum of P16,450 as balance for land in Malate purchased from him, upon the execution of the necessary documents."

Certified Copy.

(Signed) H. L. FISCHER, [SEAL.]
Secretary Municipal Board.

459 DEFENDANT'S EXHIBIT "24."

APRIL 20, 1908.

The Acting Secretary of the Municipal Board.

SIR: I have the honor to inform you of the following resolution:

"The Advisory Board having learned through the local newspapers of the purchase recently made by the Municipal Board of a large tract of land in Malate, for the sum of P37,000, to be used as a park, on motion resolved: That the Municipal Board be informed that the Advisory Board disapproves of the said purchase and that it does not waive the rights and powers conferred upon it by section 65 of the Manila Charter on matters like the one which caused the adoption of this resolution."

On several occasions this Board has requested the extension of the water system and street illumination, etc., to different parts of the City and has invariably been informed that for these improvements the City of Manila has no funds. Of all improvements the most urgent one at the present time is the canalization and dredging of the city estuaries. This is certainly more pressing than the building of parks.

The Advisory Board, much to its regret, has been there-
460 fore compelled to adopt this resolution.

Very respectfully,

——— ———.

Duplicate.

(Here follow Traveling Expense Vouchers, marked pp. 461-477.)

478 DEFENDANT'S EXHIBIT "26."

(Duplicate.)

APRIL 11, 1908.

The City Assessor and Collector, Manila.

SIR: The following copy of resolution adopted by the Municipal Board at its session of April 10, 1908 is forwarded for your information:

"Resolved, That the Municipal Board hereby accept the offer of Wm. J. Rohde to sell to the City 100,000 square meters of land, bounded on the west, north and east by the Estero de San Antonio de Abad and on the south by the property of Nuestra Señora de Guia, at P0.37½ per square meter, and,

"Be it further resolved, That the Disbursing Officer of the Municipal Board is hereby authorized and directed to pay to Wm. J. Rohde the sum of P20,000 upon the execution of the necessary documents and the balance, P17,500, during the fiscal year 1909."

Very respectfully,

(Signed) G. S. LANE,
[SEAL.] *Acting Secretary.*

43560.
gsl/n.

479 DEFENDANT'S EXHIBIT "27."

BUREAU OF AGRICULTURE,
MANILA, *June* 5, 1908.

General Order No. 10.

Rules and Regulations for the Inspection and Shipment of Livestock.

NOTICE: These rules and regulations are based on Act No. 1760, of the Philippine Commission. Copies of this act in English or Spanish will be furnished by the Director of Agriculture to any one making application for the same, either by letter or in person, at the office of the Bureau of Agriculture, Oriente Building, Manila.

Rule I.—Importation and Quarantine.

1. Except as hereinafter provided, all cattle and carabaos imported into the Philippine Islands from other countries where dangerous communicable animal diseases are known to exist, and on route to these Islands for a period of less than ten days, shall be subject to a total quarantine of not less than ten days from the date of embarkation at the port of origin.

2. Until such time as the Bureau of Agriculture may be able to provide quarantine corrals and sheds in which to keep such animals

during the period of quarantine, the present arrangement will be continued and they will be quarantined in suitable corrals or sheds provided by their owners.

3. Nothing in this, or any other of the rules herewith promulgated, shall be construed as prohibiting the slaughter of cattle for meat when they are in good health, or as requiring the Director of Agriculture to liberate any animals at the expiration of the ten days' quarantine, if, in his judgment, dangerous communicable animal diseases are liable to be spread to other points in the Philippine Islands, by permitting the shipment of such cattle or carabaos beyond the port of entry at the expiration of the quarantine period.

Rule II.—Importation of Diseased Cattle Prohibited.

1. In view of the fact that during the past year nearly all
480 shipments of cattle to the Philippine Islands from Chinese territory, and especially from the port of Hongkong, have been infected with dangerous communicable diseases, as defined in Section Two of Act No. 1760, notice is hereby given that on and after June 20, 1908, the Director of Agriculture will no longer use the discretion given him by Section Three of said Act to allow the further importation of cattle suffering from such diseases, except as hereinafter provided.

2. Whenever a shipment of cattle arriving in a port of the Philippine Islands from any foreign port proves to be infected with any dangerous communicable animal disease, notice will be given immediately in writing to the local consignee and by cable, if practicable, and when not practicable, in writing, to the authorities of such foreign port.

3. Whenever three successive shipments arriving in the Philippine Islands from any foreign port prove to be infected with any dangerous communicable animal disease other than anthrax, notice will be given immediately in writing to the local consignee and by cable, if practicable, and when not practicable, in writing to the authorities of such port, that landing permits will not be granted for further shipments from such port containing animals suffering from such disease, save only for shipments which may have actually left such port prior to the receipt of said notice.

4. Whenever any shipment arriving from any place proves to be infected with anthrax, landing permit will be refused for that entire shipment, and for all perishable articles, such as litter, bedding, and other materials which may have become infected and serve as a means of bringing the infection of this disease ashore if permitted to be landed.

Rule III.—Shipping Permits Required from Points Declared Infected.

1. In accordance with the provisions of Section Five of Act No. 1760, the Secretary of the Interior has declared the ports of Manila, Iloilo, and Cebú infected with dangerous communicable diseases of animals.

2. Hereafter, during the continuance of such infection, no animals will be permitted to be shipped, driven, or otherwise taken beyond the city or municipal limits of these ports except when accompanied by certificates issued in accordance with said section, as hereinafter provided.

3. The public is warned that Section Four of Act No. 1760
481 is in full force at all times. Persons violating its provisions do so at their peril.

Rule IV.—Shipments from Infected Points Limited.

1. Hereafter, so long as any dangerous communicable animal disease continues to exist in any place which has been declared by the Secretary of the Interior to be infected with such disease, permits for the shipment of cattle from such place to other ports or places in the Philippine Islands will not be issued except when such cattle are destined to a port or place within the Philippine Islands where the Bureau of Agriculture maintains a system of veterinary inspection, or is prepared to establish such a system, or where a general outbreak of such disease is known to exist.

2. The Director of Agriculture will establish and maintain system of veterinary inspection, so far as the force of employees at his command will permit, at any place, in the Philippine Islands, upon presentation of satisfactory evidence that the number of animals to be shipped to such place from ports or places declared to be infected with dangerous communicable animal disease, is sufficient to justify him in so doing.

Rule V.—Certain Classes of Animals Exempt.

The following classes of animals are exempt from the provisions of these rules and regulations, in accordance with the limitation stated for each class:

1. Cattle which have been permanently immunized against rinderpest or which have had rinderpest and recovered from it, when accompanied by a certificate issued by authority of the Director of Agriculture to this effect, and in which the marks and brands are so given as to enable any one positively to identify each individual animal, shall not be subject to quarantine on account of rinderpest.

2. Animals imported from countries where dangerous communicable animal diseases were not prevalent at the time of embarkation, and which have been on shipboard more than ten days, and found to be free from such diseases, may be transhipped without landing and transported to any part of the Philippine Islands.

3. Animals imported from countries where dangerous communicable animal diseases were not prevalent at the time of embarkation, arriving at a port declared by the Secretary of the Interior to be infected with dangerous communicable diseases of animals may, if found to be free from such diseases on arrival, be
482 transhipped without landing and transported to any part of the Philippine Islands, the provisions of Rule I to the contrary notwithstanding.

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4. Animals actually employed in road or field work may be allowed to leave and enter any city, municipality, province, township, or settlement where dangerous communicable animal diseases have been declared by the Secretary of the Interior to exist, whenever in the opinion of the Director of Agriculture they can be permitted to do so without danger of contracting and spreading such diseases, and under such rules as he may prescribe.

5. Native cattle shipped from one port or place to another within the Philippine Islands, when free from dangerous communicable animal diseases, and so handled as, in the opinion of the Director of Agriculture, to prevent them from contracting and spreading such diseases, shall not be required to be certified by the Director of Agriculture.

Repeal of Orders in Conflict.

The live-tock quarantine order issued by the Secretary of the Interior on November 27, 1907, General Order No. 9 issued by the Director of Agriculture on April 30, 1908, and all other orders or parts thereof which are in conflict with these rules and regulations, are hereby repealed.

G. E. NESOM,
Director of Agriculture.

Approved:
DEAN C. WORCESTER,
Secretary of the Interior.

483 DEFENDANT'S EXHIBIT "28."

BUREAU OF AGRICULTURE,
MANILA, *November* 2, 1908.

General Order No. 12.

Amendment to General Order No. 10.

The provisions of General Order No. 10, issued by the Director of Agriculture with the approval of the Honorable, the Secretary of the Interior, June 5, 1908, are hereby amended by striking out all of Rule II, and substituting therefor, the following:

Rule II.

1. Whenever any domestic animals, as defined in Section 1 of Act 1760, arrive in a port of the Philippine Islands from any foreign port and are found to be infected with or exposed to any dangerous communicable disease, as defined in Section 2 of Act 1760, such animals will be prohibited from landing except as hereinafter provided.

2. Imported animals found to be infected with or exposed to anthrax, on arrival in any port of the Philippine Islands will not be allowed to land, but must be taken, with all effects pertaining to them, beyond the jurisdiction of the Philippine Islands.

3. Whenever any domestic animals, arriving at the port of Manila from any port, are found to be infected with rinderpest or foot and mouth disease, the Director of Agriculture will grant special permission for the discharge, of any or all of such animals from the

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vessel or lighters on which they may be held at the port of Manila under the supervision of an authorized representative of the Director of Agriculture, until such time as they may be exported or slaughtered as hereinafter provided.

4. Any vessel or lighter or any other form of water craft to which animals are transferred, as provided in Section 3 of this rule, will be regarded as a quarantine corral and subject to the rules and regulations governing the same; provided that no animals held in quarantine on such vessel, lighter or water craft will be permitted to land, except for immediate slaughter until the expiration of the minimum quarantine period required under the provisions
484 of Section 1 of Rule 1, General Order No. 10.

5. The Director of Agriculture will allow animals, so held in quarantine at the port of Manila, to be landed at a point designated by him, as near as practicable to the Municipal slaughter house and to be conducted by the shortest practicable route, to be approved by him, into such slaughter house and to be killed immediately. The carcasses of such of them as are diseased and are unfit for human food at the time they are killed must be immediately transported to the city crematory and burned.

6. The Director of Agriculture will refuse to permit the transfer from the ship or vessel on which they arrive at the port of Manila to any other vessel, lighter or other form of water craft, or to the shore, of all animals hopelessly ill with any dangerous communicable disease or suffering from such disease to such an extent as to render them unfit for human food; provided that the Director of Agriculture will, in his discretion, authorize the killing of such animals on the ship or lighter, and their immediate transfer to the crematory where they must be immediately burned.

7. Landing privileges similar to those authorized in Sections 3, 4, 5 and 6 of this Rule will be extended to animals arriving at other ports of entry in the Philippine Islands, whenever such ports provide suitable slaughter houses, approved by the Director of Agriculture, in which animals may be conveniently landed and killed without danger of spreading infection.

This order shall take effect immediately upon its approval by the Secretary of the Interior.

G. E. NESOM,
Director of Agriculture.

Approved November 2, 1908:
DEAN C. WORCESTER,
Secretary of the Interior.

485 I hereby certify that the foregoing 484 typewritten pages contain a true and correct copy and translation of the proceedings had upon the separate trial of Teodoro M. Kalaw and exhibits admitted in evidence in the above entitled cause in the Court of First Instance of Manila, P. I.

In witness whereof I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands, this 23rd day of June, 1911.

[Seal Corte Suprema Islas Filipinas.]

J. E. BLANCO,
Clerk Supreme Court, P. I.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 5527.

THE UNITED STATES, Plaintiff and Appellee,
versus
MARTIN OCAMPO, TEODORO M. KALAW, and FIDEL A. REYES,
Defendants and Appellants.

Thereafter and on the 12th day of July, 1909, the case was duly received and docketed in the Supreme Court of the Philippine Islands.

Thereafter and on the 22nd day of December, 1910, the Supreme Court rendered its decision on the merits, which said decision is in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 5527.

THE UNITED STATES, Plaintiff,
vs.
MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, FAUSTINO AGUILAR, Defendants.

Decision.

JOHNSON, *J.*:

Statement of Facts.

On the 5th day of November, 1908, the Honorable L. M. Southworth, then acting Prosecuting Attorney for the City of Manila, presented in the Court of First Instance the following complaint:

The undersigned accuses Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar of the crime of libel, committed as follows:

That on or about the 30th day of October, 1908, the said Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, and each of them, were the editors, proprietors, owners, directors, writers, managers, administrators, printers and publishers, in the City of Manila, Philippine Islands, of a certain daily newspaper, known as "El Renacimiento"; that said news paper was, on and about the 30th day of October, 1908, printed edited, published and circulated daily by said defendants and each

of them, in both the Spanish and Tagalog languages in the City of Manila, Philippine Islands; that on and about the 30th day of October, 1908, in the City of Manila, Philippine Islands, the said Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, and each of them, as editors, proprietors, owners, directors, administrators, writers, managers, printers and publishers of the said newspaper, "El Renacimiento," in the City of Manila, Philippine Islands, did then and there wilfully, unlawfully, feloniously, and with malicious intent to injure one Dean C. Worcester, who was at that time, and still is, a member of the Philippine Commission, and Secretary of the Interior of the Philippine Islands, and with the malicious intent to impeach the honesty, virtue and reputation of the said Dean C. Worcester, both as a man and as an official of the Government of the Philippine Islands, and to expose the said Dean C. Worcester to public hatred, contempt and
3 ridicule,—write, edit, print, and publish and circulate, and cause to be written, edited, printed, published and circulated in a regular daily issue of said newspaper "El Renacimiento", of the date of October 30th, 1908, of and concerning the said Dean C. Worcester, a certain false, injurious and malicious defamation and libel, tending to impeach the honesty, virtue and reputation of the said Dean C. Worcester, and expose him, the said Dean C. Worcester, to public hatred, contempt and ridicule; that the said libel was printed, published and circulated in the Spanish language; that the said publication in the Spanish language was as follows:

"MANILA, 30 *de Octubre de* 1908.

Editorial.

Aves de Rapiña.

En la extensión del globo, unes han nacido para comer y devorar, otros para ser comidos y devorades.

Una y otra vez, estos últimes se han agitade, tratando de rebelarse contra un orden de cesas en que son presa y pasto para la verocidad insaciable de los primeros. Alguna vez han tenido suerte ahuyentando lejos a los comedores y devoradores, pero en la mayor parte de las veces no se ha conseguido más que un cambio de nombre ó de plumaje.

En todas las esferas de la creación, la situación es la misma, la relación entre unos y otros es la que dictan el apetito y la fuerza para saciarle á costa del prójimo.

Entre los hombres, es facilisimo observar el desarrollo de este fenomeno diario. Y por alguna razon psicológica los pueblos que se creen poderosos han tomado por emblema las criaturas más fieras y más dañinas; ora es el leon, ora el aguila ó la serpiente. Unos lo han hecho por un secreto impulso de afinidad, otros por efecto de una simulación, de vanidades infatuadas aparentando lo que no son ni pueden ser jamás.

4 El águila, simbelizando libertad y fuerza, es el ave que ha encontrado más adeptos. Y los hombres, colective é

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individualmente han querido copiar é imitar al ave más rapaz, para triunfer en el saqueo de sus semejantes.

Hay hombres que, además de ser águilas, reunen en sí las caracteristicas del buitre, del buho y del vámpiro.

Subiendo á las montañes de Benguet para clasificar y medir cráneos de igorrotes y estudiarlos y civilizar los y sorprender al vuelo, con ojo de ave de rapiña, donde se encuentran los grandes yacimientos del oro, la presa oculta entre los montes solitaries, para apropriárselos despues gracias á facilidades legales hechas y deshechas al antojo, pero siempre en beneficio propio.

Autorizando á despecho de leyes y ordenanzas una matanza ilegal de ganado enfermo, para sacar beneficio de la carne infecta y podrida que el mismo estaba obligado á condenar en virtud de su posicion oficial.

Presentandose en todas las ocasiónes con el ceño fruncido del sabio que consume su vida en los misterios del laboratorio de ciencia, cuando toda su labor científica se reduce á desecar insectos é importar huevas de peces como si los peces de este pais fueran menos nutritivos y menos ricos, de tal modo que valiera la pena de sustituirlos con especies venidas de etros climas.

Dando un impulso admirable al descubrimiento de veneros de riqueza en Mindoro, en Mindenaw y demas puntos vírgenos del Archipelago con el dinero del pueblo y con el pretexto de bien público, cuande en rigor se trata de poseer todes los datos y la clave de la riqueza nacional en provecho persenalísimo como se demuestra por al adquisicion de inmensas propiedades registradas con nombres ajenos.

Promoviendo por medio de agentes y consocios secretos la venta á la cuidad de terrenos sin valor por cantidades fabulosas que los padres de la ciudad no se atreven á rehusar por el temor de disgustar á quien va detras de la moción, y que no rehusan por lo que les conviene.

Patrociando la concesión de hoteles en sitios terrepleandos con la perspectiva de enormes utilidades, á expensas de la sangre del país.

Tales son las caracteristicas del hombre que es á la vez águila que sorprende y devora, buitre que se solaza en las carnes muertas y putrefactas, buho que aparenta una omnisciencia petulante y vámpiro que chupa en silencio la sangre de la víctima hasta dejarle exangue.

Estas aves de rapiña son las que triunfan. Su vuelo y su dirección jamás se ven detenides.

Quién los detrendra?

Unos participan del botin y del saqueo. Otros son tan débiles para levantar la voz de protesta. Y otros mueren en la desconsoladora destrucción de sus propias energías é intereses.

Y entonces surge, terrorifica, la leyenda inmortal:

Mane, Tecel, Phares."

and a translation thereof into the English language is as follows:

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MANILA, OCTOBER 30TH, 1908.

Editorial.

Birds of Prey.

On the surface of the globe some were born to eat and devour, others to be eaten and devoured.

Now and then the latter have bestirred themselves endeavoring to rebel against an order of things which makes them the prey and food of the insatiable voracity of the former. At times they have been fortunate, putting to flight the eaters and devourers, but in the majority of cases they did not obtain anything but a change of name or plumage.

The situation is the same in all the spheres of creation; the relation between the ones and the others, is that dictated by the appetite and the power to satisfy it at the fellow-creature's expense.

Amongst men it is very easy to observe the development of this daily phenomenon. And for some psychological reason the nations who believe themselves powerful have taken the fiercest and most harmful creatures as emblems; it is either the lion, or the eagle, or the serpent. Some have done so by a secret impulse of affinity and others in the nature of simulation, of infatuated vanity, making themselves appear that which they are not nor ever can be.

The eagle, symbolizing liberty and strength, is the bird that has found the most adepts. And men, collectively and individually, have desired to copy and imitate the most rapacious bird in order to triumph in the plundering of their fellow-men.

There are men who, besides being eagles, have the characteristics of the vulture, the owl and the vampire.

Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

Authorizing, despite laws and ordinances, an illegal *sa*ughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people and under the pretext of the public good when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially per-

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sonal benefit, as is shown by the acquisition of immense properties registered under the names of others.

Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices, which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people.

Such are the characteristics of the man who is at the same time an eagle who surprises and devours, a vulture who gorges himself on dead and putrid meats, an owl who affects a petulant omniscience, and a vampire who silently sucks the blood of the victim until he leaves it bloodless.

It is these birds of prey who triumph. Their flight and their aim are never thwarted.

Who will detain them?

Some share in the booty and the plunder. Others are too weak to raise a voice of protest. And others die in the disconsolating destruction of their own energies and interests.

And then there appears, terrifying, the immortal legend:—

Mane, Tecel, Phares".

That the said newspaper, "El Renacimiento", in the said issue of the 30th day of October, 1908, had, as the defendants well knew, a large circulation in the City of Manila and throughout the provinces of the Philippine Islands, in all of which the Spanish language is both read and spoken; that the said Dean C. Worcester was, at the time of said publication, and is now, well known by the officials of the Government of the Philippine Islands, and by the inhabitants of the City of Manila, and by the people of the provinces of the Philippine Islands, and the public generally, not only personally but as a member of the Philippine Commission, and as Secretary of the Interior of the Philippine Islands. That the defamation and libel, and the words, terms and language used in said defamation and libel, as follows:

"Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to copy in his flight with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

"Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

"Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

"Giving an admirable impulse to the discovery of wealthy lodes

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in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as it shown by the acquisition of immense properties registered under the names of others.

Promoting through secret agents and partners, the sale to the city of worthless land at fabulous prices, which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people."

were all intended by said defendants to refer to and mean the said Dean C. Worcester, and would be understood and were understood by the officials of the Government of the Philippine Islands, the inhabitants of the City of Manila, and the people of the Philippine Islands generally to refer to and mean the said Dean C. Worcester.

for the reason that it is a matter of common knowledge that
8 the said Dean C. Worcester, in the performance of his duties as such member of the Philippine Commission and as such Secretary of the Interior of the Philippine Islands, has heretofore ascended to the mountains of the province of Benguet in order to make a study of the native tribe known as the Igorots, who reside there; for the reason that it is a matter of general knowledge that there are large deposits of gold in said mountains of Benguet, and for the reason that, as a member of the Philippine Commission, which is the law-making body of said Philippine Islands, the said Dean C. Worcester has taken, and does take part in the making and repeal of the laws of said Philippine Islands; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester in his capacity as such Secretary of the Interior of the Philippine Islands, has had under his supervision and control the enforcement of the laws of the Philippine Islands and the Ordinances of the City of Manila regarding the slaughtering of cattle; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has supervision and control of the Bureau of Science of the Government of the Philippine Islands and is himself generally known as a man devoted to the study of science; and for the further reason that it is a matter of general knowledge that the said Dean C. Worcester in his capacity as such Secretary of the Interior of the Philippine Islands, has heretofore caused to be imported into the Philippine Islands fish eggs, for the purpose of stocking the mountain springs of said Philippine Islands; for the further reason

that it is a matter of common knowledge that the said Dean C.
9 Worcester in his capacity as such Secretary of the Interior of the Philippine Islands, has made journeys and explorations in the Islands of Mindoro, Mindanao, and in other regions of the Philippine Archipelago; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his ca-

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pacity as such Secretary of the Interior of the Philippine Islands, at one time investigated and made a report to the Philippine Commission regarding the proposed purchase of a certain piece of land by the City of Manila; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, as a member of said Philippine Commission, along with the other members of said body, has heretofore been in negotiation with a certain hotel company in regard to the location of a proposed hotel on some of the filled-in lands of the City of Manila.

That the said defendants intended to and did charge the said Dean C. Worcester with prostituting his office as a member of the Philippine Commission and as Secretary of the Interior of the Philippine Islands, for private ends; with squandering the public funds for the purpose of promoting his personal welfare; with violating the laws of the Philippine Islands and the Ordinances of the City of Manila; with entering into illegal combinations for the purpose of robbing the people; with the intent of gain to himself and certain other individuals; and that the said defamation would be and was so understood by the inhabitants of the City of Manila, the officials of the Government of the Philippine Islands, and the people of the Philippine Islands generally, to accuse the said Dean C. Worcester of the conduct and acts and things above set forth, and to state and publish by innuendo and inference that he, the said Dean C. Worcester, was guilty of said acts, deeds and doings; all of which allegations regarding the character and conduct of the said Dean C. Worcester, as above set forth, were and are false and without foundation in fact.

That the said defamation and libel was published by the defendants, and each of them as aforesaid, wilfully and maliciously, under large and conspicuous headlines, and every effort made on the part of the said defendants, and each of them, to insure that said defamation and libel attract the attention of and be read by all the subscribers and readers of the said newspaper "El Renacimiento," and to give the said defamation and libel the widest publication possible.

All contrary to the statute in such cases made and provided.

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Subscribed and sworn to before me this 5th day of November, 1908, in the City of Manila, Philippine Islands, by L. M. Southworth, Acting Prosecuting Attorney of the City of Manila.

CHAS. H. SMITH,
Judge Court of First Instance.

A preliminary investigation has been conducted under my direction, having examined the witnesses under oath, in accordance with the provisions of Section 39 of Act 183 (Manila Charter) as amended by section 2 of Act 612 of the Philippine Commission.

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Subscribed and sworn to before me this 5th day of November, 1908, in the City of Manila, Philippine Islands, by L. M. Southworth, Acting Prosecuting Attorney for the City of Manila.

CHAS. H. SMITH,
Judge Court of First Instance.

Witnesses.	Addresses.
Governor General Jas. F. Smith	Ayuntamiento.
Commissioner Newton W. Gilbert	Ayuntamiento.
Secretary of Finance and Justice, Gregorio Aranota	Ayuntamiento.
A. O. Zinn	Ayuntamiento.
Dr. G. E. Nesom	Oriente Building.
B. Lowenstein	No. 34 Plaza Moraga.
M. A. Clarke	No. 2 Plaza Moraga.
C. P. Shuman	Post Office.
Enrique Barrera y Caldes	Not. Pub.
Arcadío Arellano	Maestro de Obras.

On the same day (the 5th of November, 1908) warrants of arrest were issued for each of the said defendants. They were duly arrested, appeared before the court and requested a copy of the complaint and that they be given until the 7th day of November, at eight o'clock A. M. to answer.

12 On the 7th day of November, 1908, the defendants, by their attorney, the Honorable Felipe Agoncillo, presented the following motion:

"Come now Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, the accused in the above entitled cause, and, before demurring to or answering the complaint, respectfully state:

"1. That there has been issued in this cause a judicial order of arrest against each of the defendants herein, and that each and all of them have been arrested to answer for a criminal offence, to-wit, the crime of libel, without a preliminary investigation having been first held by this court, and without any court, judge or magistrate, or any other competent authority, having first determined in accordance with the law that the alleged crime of libel has been committed and that there is sufficient reason to believe that all and each of the said defendants are guilty of the said crime, in violation of Sections 12 and 13 of General Orders No. 58, issued by the Office of the Military Governor of the United States in the Philippine Islands on the 23rd day of April, 1900, and of paragraphs first, third, eleventh and eighteenth of Section 5 of the Philippines Bill, enacted by the Congress of the United States on the
13 first day of July, 1902.

"2. That Section 2 of Act No. 612 of the Philippine Commission, approved February 3, 1903, although it deprives persons accused in the City of Manila of the right to a preliminary investigation, has not relieved this court of its duty to hold said preliminary investigation, as provided in an imperative manner in Section 13 of

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the aforesaid General Orders No. 58, which said provisions on this subject are still in force and effect in the City of Manila.

"3. That Section 2 of the aforesaid Act No. 612, which deprives persons accused in the City of Manila of the right to demand a preliminary judicial investigation, is contrary to the provisions of Section 5 of the aforesaid Philippines Bill, for the following reasons:

"(*a*) Because it provides that persons residing in the City of Manila may be deprived of their liberty without due process of law. (Par. 1.)

"(*b*) Because it denies to the inhabitants of the City of Manila the legal protection of a preliminary judicial investigation before they can be arrested, as provided in said General Orders No. 58, which is still in effect in these Islands as to all persons, and, in the City of Manila, as to complainants, and the courts, and, therefore, denies to the individual the equal protection of the law. (Par. 1.)

"(*c*) Because it deprives persons detained in the City of Manila to answer for a criminal offence of the protection of the 'proper judicial proceeding.' (Par. 3.)

"(*d*) Because it violates the guaranty against arbitrary detentions. (Par. 11.)

"Wherefore, the defendants pray that this honorable court be pleased to set aside the warrant of arrest heretofore issued in this cause against each and all of them, and that they be set at liberty, and that the bonds given be exonerated, and that all further proceedings in this case be suspended until the cause is duly brought under the jurisdiction of this court by 'the proper judicial proceeding.'"

On the 10th day of November, 1908, the Prosecuting Attorney answered the foregoing motion in writing, which is as follows:

Now comes the undersigned Assistant Prosecuting Attorney from the City of Manila, and in answer to the Motion of the accused herein to dismiss this Cause, respectfully submits that the same should be over-ruled, for the following reasons, to-wit:

(1) Because the Information shows upon its face that a preliminary examination was held upon the charge alleged in said Information, by the Prosecuting Attorney, in accordance with Act 612 of the Philippine Commission.

(2) Because there is no law in the Philippine Islands requiring the Judges of the Courts of First Instance of the City of Manila to hold preliminary investigations in criminal causes, and issue orders on probable cause, where the Prosecuting Attorney, after due investigation of the facts, as in this case, has presented an Information against the accused, in proper form.

(3) Because the accused have waived any rights which they may have had to object to any defects or irregularity in the warrants of arrest, by appearing before the Court and giving bond for their several appearance before said Court at a subsequent day of the term, to answer to the Information against them.

It is therefore respectfully submitted that the Motion should be

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over-ruled and the defendants required to plead to the Information.

After hearing the arguments upon the above motion to quash the proceedings, the Honorable Charles H. Smith, then one of the Judges of the Court of First Instance of the City of Manila, rendered the following decision:

16 The information was presented in this case on the 5th day of November, 1908, and was accompanied, as shown by the files in this case, by two affidavits of Mr. L. M. Southworth, assistant prosecuting attorney of the City of Manila, in the first of which the said prosecuting attorney swears to said information, and in the second of which the said official swore that he had practiced the preliminary investigation in the office of the prosecuting attorney of the City of Manila prescribed by section 39 of Act No. 183 of the Honorable Philippine Commission, being the charter of the city of Manila, as amended by section 2 of Act No. 612 of said Commission. Said affidavits were signed and sworn to before the judge presiding over the criminal branch of this court. A warrant was thereupon issued for the arrest of the defendants who, in pursuance of said warrant, were brought into the court on the same day, the said information was read to them and they were allowed until the morning of the 7th day of November to plead thereto. At the conclusion of the reading of said complaint the defendants with the assistance of their counsel all presented a bail bond in the sum of one thousand pesos each, and were then released from custody, being ordered to return to court the morning of the said seventh day of November. At the time last before mentioned the defendants with their counsel all appeared in court and presented in writing a motion to quash the proceedings herein, which motion is based upon two propositions: (1) That the preliminary investigation required by law has not been practiced in this court; (2) That no specific order has been issued by the Court in which it has been determined that the crime complained of has been committed and that there is reasonable ground to believe that the parties charged have committed such crime.

17 1. The charge in this case is a violation of the provisions of chapter 297 of the compiled laws of the Philippine Commission. The punishment prescribed for such violation is "a fine of not exceeding four thousand pesos, or imprisonment not exceeding one year, or both," so that the case is only triable in this court. Section 13 of General Order No. 58 (being section 3261 of the compiled laws) provides that:

"When a complaint or information alleging the commission of a crime is laid before a magistrate, he must examine, on oath, the informant or prosecutor and the witnesses produced, and take their depositions in writing, causing them to be subscribed by the parties making them. If the magistrate is satisfied from the investigation that the crime complained of has been committed, and that there is reasonable — to believe that the party charged has committed it, he must issued an order for his arrest. If the offense be bailable,

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and the defendant offer a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison."

This was the law promulgated during the military government of the Philippine Islands under American sovereignty, and after the establishment of the civil government here and the volume of business in this court was found to be substantially larger than was anticipated, the law hereinbefore mentioned was enacted by the Honorable Philippine Commission, to furnish relief to this court in the city of Manila. Thereupon such relief was provided by means of Act No. 612 of said Commission, the second section of which, so far as the same is applicable to this case, is as follows:

"In cases triable in the Court of First Instance of the City of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the Prosecuting Attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment, shall have presented an information against him in proper form: Provided, however, That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable."

18 The validity of this law and the sufficiency of the provisions thereof in the matter of criminal procedure treated therein were submitted to and considered by the Honorable Supreme Court of the Philippine Islands in a very able decision of that court in the case entitled "United States, complainant, vs. William A. Wilson, defendant, reported in volume 4 of the Philippine Reports, English Edition, at page 317, etc. In a very studious examination of said last mentioned case, the Honorable Supreme Court determined that a preliminary investigation conducted by the prosecuting attorney of the city of Manila or his assistants, in pursuance of the provisions of such section 2 of said Act No. 612, was sufficient to meet the requirements of the law operative in the Philippine Islands in the matter of preliminary investigations and that no further investigation is now required to be made by the magistrate, who in the city of Manila is the trial judge.

It appears of record in the case at bar that the assistant prosecuting attorney of the city of Manila has practiced in the office of the prosecuting attorney of said city the preliminary investigation required by law. This is shown by his sworn statement annexed to said information and sworn to by him before the trial judge here. Under these circumstances and being governed by the rule promulgated by the Honorable Supreme Court of the Philippine Islands in the said Wilson case, the court must and does overrule said motion as to the said first proposition.

19 2. A specific separate order of the court as to probable cause, etc. is no longer required by law in criminal causes (felonies) instituted in this court city of Manila. The practice prescribed in said section of General Order 58 was only required in cases in which the preliminary investigations therein were conducted by the trial judge or magistrate; in fact, said section of Gen-

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eral Order No. 58 does not provide that a written order to this end must be made by such magistrate. However, as to the city of Manila, said practice has been entirely substituted by section 2 of said Act No. 612, the Prosecuting attorney of the city of Manila, according to the provisions of section 486 of the compiled laws (section 39 of Act No. 183 of the Commission), is a judicial officer, having full authority to make preliminary investigations and present informations in all criminal cases, and when he as such officer presents in court an information sworn to by him accompanied by an affidavit that he has practiced the preliminary investigation required by law, *is* pursuance of said Act No. 612, and takes such oaths before the magistrate, who is the judge presiding over this (criminal) branch of the court, probable cause, supported by oath or affirmation, appears of record in the case. In reality at the time of the presentation of said information, together with said affidavits, the trial judge (magistrate) considered and determined that probable cause, etc. had been shown. The issuance of the warrant signed by the same magistrate or trial judge must be considered as a determination on the part of the court or magistrate as to probable cause, etc. if
20 such a determination is now necessary under the amended laws applicable to this feature of the case. Through the assistance of defendant's counsel a bail bond was provided by them and approved by the court at the time of the reading of the complaint, and one and one-half days before the presentation of the motion. Under the rule laid down in text books and in the American and English Encyclopedia of Law, the questions raised in said motion are unseasonable.

In the said Wilson case, the Honorable Supreme Court considered this very question, and there not appearing in the record a specific order of the trial judge (magistrate) as to probable cause, the Supreme Court held that the same is not now an indispensable legal step in a criminal cause instituted in this court (City of Manila).

During the last two years it has been impossible to conduct preliminary investigations before the judge (magistrate) presiding over criminal sala, and it has not been considered necessary in view of the doctrine promulgated by the Honorable Supreme Court of the Philippine Islands in the said Wilson case. The rule of procedure approved and settled in the said last mentioned case has been followed by all the judges presiding over this branch of the court, and very properly so in view of the great magnitude of business pressed upon the court for its attention.

Following and being governed by the interpretation of the law as found in the said decision of the Honorable Supreme Court of the Philippine Islands, this court must and does overrule the said motion as to the said second proposition.

It is therefore ordered that said motion be denied and that the defendants each and all plead to said information forthwith."
21 The defendants duly excepted to this order denying said motion.

On the 10th of November, 1908, the defendants presented another motion as follows:

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"Come now Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes and Faustino Aguilar, the defendants in the above entitled cause, and without waiving any of the objections by them raised in their motion of the 7th instant and the exception by them taken to the order of this court denying the same, and which they now reproduce in all its parts, respectfully ask the court that there be submitted to this court and to them for examination the proceedings of the preliminary investigation alleged to have been conducted by the Prosecuting Attorney of the City of Manila, and that, until the accused have fully examined the said proceedings, they be not compelled to demur to or answer this complaint.

"This petition is based upon the following grounds:

"1. That the said preliminary investigation as the basis of the complaint should show the nature, character and origin of the accusation.

"2. In that all and each of the accused have a right to be fully informed of the nature, character and origin of the accusation against them before they can demur to or answer the complaint, in conformity with the provisions of Section 5, paragraph 2, of
22 the Philippines Bill, approved July 1st, 1902, by the Congress of the United States, and Section 15, paragraph 2, of General Orders No. 58, issued April 23rd, 1900, by the Office of the Military Governor of the United States in the Philippine Islands."

This motion was decided by the court in the following language:

A motion is presented in this case by defendants' counsel for an order of the court requiring the prosecuting attorney to place before the court, and the defendants, the whole of the preliminary investigation conducted in this case in the office of the prosecuting attorney.

1. The charge in this case is libel; violation of Act No. 277 of the Philippine Commission. The published article complained of is set out in full in the information, so that no one can be misguided or deceived as to the character of the crime complained of.

2. The prosecuting attorney of the city of Manila is by the law governing that office, a judicial officer. His duties in the matter of preliminary investigations are prescribed by law, to-wit: Act No. 612 of the Honorable Philippine Commission; likewise section 486 of the compiled laws of the Philippine Islands. His duties are separate and distinct from those of the court. In each of these two branches of the judiciary there are plain limitations prescribed by law. The court has grave doubt, upon the refusal of the prosecuting attorney to present such information in compliance with the order of the court, that said prosecuting attorney could be punished
23 for a violation of the order of the court.

3. The question submitted in this motion was clearly settled in the case of the United States vs. Wilson, reported in the 4th volume of the Philippine Reports. The rules promulgated in that case must govern this court in the application of the law here now. Besides this, no showing has been made, and it has not been claimed, that the prosecuting attorney has refused to give the information sought, upon application therefor.

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4. If the motion presented at this time could have merit at any stage of the case, it is inopportune now.

The motion is therefore denied and the defendants ordered to plead.

To this ruling of the court the defendants duly excepted.

On the 12th day of November, 1908, the defendants presented another motion, as follows:

"Come now Teodoro M. Kalaw, Fidel A. Reyes, Lope K. Santos, Faustino Aguilar and Martin Ocampo, the defendants in the above entitled cause, and respectfully ask this court to hold a preliminary investigation in this cause before the said accused either demur to or answer the complaint.

"This motion is based upon the provisions of General Orders No. 58 and Section 5 of the Philippines Bill and other laws of the Commission which grant an accused person in a criminal case the right to a preliminary investigation, and also upon the ground that
24 the provisions of Section 2 of Act No. 612, which deny to accused persons in the City of Manila such right, are null and contrary to the Constitution of the United States, the same being in violation of the provisions of said Section 5 of the Philippines Bill, paragraphs 1st, 3rd, 11th and 18th."

This motion was opposed by the prosecuting attorney in the following language:

Section 2 of Act 612, in part, provides:

"In cases triable only in the Court of First Instance in the City of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the Prosecuting Attorney, after a due investigation of the facts, under Section thirty-nine of the Act of which this is an amendment, shall have presented an information against him in proper form: Provided, however, That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable."

The sole purpose of this provision of said Act was to change the law in regard to preliminary investigations, as it then existed in General Order 58, and thereby remove the necessity for such investigation by the Judges of the Court of First Instance of the City of Manila. If the contention of counsel, that it is necessary for the Judges of the Court of First Instance to hold preliminary examinations before issuing warrants of arrest notwithstanding the fact that preliminary examinations have already been held by the Prosecuting Attorney in accordance with law, be correct, then the provisions of Act 612, above referred to, are rendered perfectly nugatory, and its purpose absolutely defeated. It was the duty of the
25 Prosecuting Attorney under Act 183, to which Act 612 is an amendment, to investigate all crimes and misdemeanors occurring in the City of Manila, and to prepare and present complaints and informations to the proper Courts, but to these investigations there is not given such solemnity under Act 183 as to render sub-

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sequent investigations by the Court before issuing warrants of arrest, unnecessary.

The law-making body in passing Act 612 evidently had a two-fold purpose in view, namely:

(1) To prevent the publicity which was necessarily incident to such investigations before the Judge in open court.

(2) To expedite the criminal business in the Court of First Instance in the City of Manila, (with dockets usually crowded), by having these preliminary examinations held by the Prosecuting Attorney.

The Supreme Court of the Philippine Islands has expressly decided that it is not necessary for the Judges of the Court of First Instance of the City of Manila to hold preliminary investigations, when an Information is presented by the Prosecuting Attorney, certifying that a preliminary investigation has been held by him. (See the U. S. vs. Wilson, Vol. 4, Phil. Rep. page 317).

The second contention of Counsel that it is necessary for the Judges of the Court of First Instance of the City of Manila to issue an order, finding that probable cause exists, before issuing warrants of arrest, is equally as untenable. It would be impossible for the Judge to issue an order saying that he found probable cause to exist unless he personally conducted the preliminary examination. He would have nothing upon which to base the order. It
26 might be said that the Judge could issue the order upon the faith of the preliminary examination held by the Prosecuting Attorney, as certified to in the Information. If this be true, if the Judge has the right to accept the preliminary examination made by the Prosecuting Attorney, and from it, as certified in the Information, find that probable cause exists, then the Court has found that probable cause exists in this case by the issuance of the warrants of arrest. But conceding that it was absolutely necessary for the Court to hold a preliminary examination; that it was absolutely necessary for the Court to find that probable cause existed before issuing the warrants of arrest, these matters could only render the arrest illegal, and it is perfectly immaterial as to whether the arrest is legal or illegal. The defendants are before the Court, and the Court has the legal right to try them upon a valid information. The courts have held that if a party is arrested without warrant and brought before a Court of competent jurisdiction, that the Court will proceed to try the accused notwithstanding the illegality of the arrest. The books are full of cases where accused have been kidnapped beyond the jurisdiction in which the charges were filed against them, and brought back and tried.

The validity of prosecutions by information has been sustained by the United States Supreme Court in the following cases: Hurtado vs. People of California, 110 U. S. 516; McNulty vs. California, 149 U. S. 645, and again, in the case of Hawaii vs. Mankichi, 190 U. S. 197.

27 In an elaborate and well considered opinion, the Supreme Court of New Mexico holds that an information presented by a prosecuting officer is a sufficient finding of probable cause to

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authorize a Court *of* issue a warrant of arrest, although the information is not sworn to. (See Territory vs. Cutinola, 4th New Mex. Rep. 305.)

In Vol. 30 of the American & English Encyclopedia of Law, page 86, it is stated:

"Where an information states an offense, and is sworn to positively by some person, it is sufficient of itself to authorize a clerk to issue a warrant for the arrest of the defendant without any finding by the clerk or other person of probable cause to believe the defendant guilty."

Conceding again, for the sake of argument, that the warrants in this case are void because no probable cause was found by the Court before issuing them, the accused have waived all their rights to object to the same by appearing and giving bond. "Giving bond waives defects in issuance of process for arrest." 2 Humphrey, (Tenn.) 445, 15 Barb. (N. Y.) 26, 24th Vermont, 506.

It is respectfully submitted that the Motion should be overruled, and the accused required to plead to the Information.

Upon a due consideration of said motion and the arguments presented, the Judge of the lower court rendered a decision denying the same, in the following language:

The defendants are all present in court; likewise their counsel, and counsel for the government.

28 The information was read in this cause on the 5th day of November, at which time the defendants were ordered to appear in court on the morning of the 7th of November to plead to said complaint. On the morning of November 7th, a motion was presented by defendants' counsel for an order of the court quashing the complaint and warrant filed and issued in this cause, upon two certain reasons stated therein. An adjournment was then ordered by the court to the morning of the 10th day of the present month, for the purpose of considering said motion and rendering a decision thereon. On the morning of the 10th day of November defendants with their counsel appeared in court, at which time the government was represented by the prosecuting attorney and his assistant, Mr. Southworth. Said motion was then and there over-ruled. Immediately following said decision a motion was presented by defendants' counsel for an order of the court requiring the prosecuting attorney to present and exhibit in this case the preliminatry investigation practiced in the office of the prosecuting attorney, in pursuance of the provisions of Act No. 612, of the Honorable Philippine Commission, which motion was denied, being founded upon the rule promulgated in the case of the United States against Wilson, reported in the 4th Volume of Philippine Reports. Defendants' counsel then requested further time within which to present a demurrer to said complaint, and for nothing more. This application was granted and the defendants were ordered to appear in court at this time, to-wit: nine o'clock A. M. November 12, 1908, for the presentation of said demurrer,

29 as the only further dilatory plea, and then to answer to said complaint.

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At the last mentioned time, to-wit: nine o'clock A. M. November 12, 1908, defendants' counsel now present a motion for an order of the court authorizing and directing that a preliminary investigation be now conducted in this case.

Considering the foregoing proceedings in this case, and the orders of the court issued therein, together with the provisions of Act No. 612 of the Honorable Philippine Commission, as interpreted by the Honorable Supreme Court in said case of the United States vs. Wilson; and, no showing having been made of any special reason why a preliminary investigation should be conducted by the court at this time, and this criminal branch of the court being occupied with the consideration of a substantial volume of business, and the charge in this case being criminal libel, the article complained of being set out in full in the information, it is ordered that said motion be denied, and that the defendants plead to said complaint forthwith.

To which ruling of the Court an exception was duly taken by the defendants.

On the 12th day of November (1908) the defendants appeared and each demanded a separate trial, which demand was granted on the same day.

On the same day (the 12th of November, 1908) the defendants presented separate demurrers, each of which was in the same form and supported by the same arguments, to the complaint. The grounds of the demurrers were as follows:

30 (1) "That this Court has no jurisdiction to take cognizance of the crime charged in the complaint."

(2) "That the facts set out in the complaint do not constitute the crime of libel."

On the same day (12th of November, 1908) the Court rendered the following judgment denying the said demurrers:

Upon reading and considering the information presented in this cause, the court is satisfied and so finds that the same is prepared in accordance with the provisions of section 6 of General Order No. 58, being section 3253 of the Compiled Laws.

The matter urged in part one of the demurrer presented in this cause has already been considered and determined by the court in its previous orders issued herein.

In part two of said demurrer the question of the failure of specification of the home of the complaining witness or offended person in the article complained of here is urged as a fatal omission or infirmity in the Information. This question, as the court remembers it, has been considered and determined by a Federal Court in the case of "Enquirer Co. vs. Johnson," reported in the 72nd Federal Reporter, in which case the doctrine was promulgated that an acquaintance of an offended person in matters of this kind may testify that upon reading the article complained of he understood it to refer to such offended person. This question was also

31 considered by the Honorable Supreme Court of the Philippine Islands in the case of Causing vs. Jacosalem, reported

in the 5th Volume of Philippine Reports, at page 155 of the English edition.

Considering all the questions submitted in said demurrer and the arguments of counsel in support thereof, the court finds that said demurrer is not well founded, and it is ordered that the same be over-ruled and that the defendants each and all, plead to said complaint forthwith.

To which ruling of the Court the defendants duly excepted.

On the same day (12th of November, 1908) the defendants were duly arraigned, the complaint was read to each of them and a copy of the same was delivered to each one. They were each requested to plead whether or not they were guilty of the crime charged in the said complaint. Each defendant stood mute, and the plea of "Not Guilty" was entered in the case of each and in behalf of each of the said defendants.

On the same day (12th of November, 1908) the Honorable Charles H. Smith, Judge, ordered the accused to appear before him on the 14th of November, 1908, at ten o'clock A. M., for the purpose of fixing the date of trial for each of the said defendants.

On the 16th day of November, 1908, the defendant Martín Ocampo appeared and requested the appointment of assessors to assist the Judge in the trial of the cause, and two assessors were duly appointed in conformity with the provisions of law.

32 On the 24th day of November, 1908, the defendant, Lope K. Santos, appeared and requested the appointment of assessors to assist the Judge in the trial of his cause, and two assessors were duly appointed, in conformity with the provisions of law.

On the 1st day of December, 1908, the defendant, Faustino Aguilar, appeared and requested the appointment of assessors to assist the Judge in the trial of his cause, and two assessors were duly appointed, in conformity with the provisions of law.

On the 1st day of December, 1908, the defendant, Fidel A. Reyes, also appeared and requested the appointment of assessors to assist the Judge in the trial of his cause, and two assessors were duly appointed, in conformity with the provisions of law.

On the 2nd day of December, 1908, the defendant, Teodoro M. Kalaw, appeared and requested the appointment of assessors to assist the Judge in the trial of his cause, and two assessors were duly appointed, in conformity with the provisions of law.

The assessors selected in each of the cases against each of the defendants were duly summoned and sworn in accordance with the provisions of law.

33 Trial of the Defendant Martín Ocampo.

On the 18th day of November, 1908, the cause against the defendant Martín Ocampo was brought on for trial. There were present at the beginning of the trial the Honorable A. S. Crossfield, one of the Judges of the Court of First Instance of the City of Manila, and the two assessors theretofore selected at the request of the defendant, Miguel Velasquez and Tomas Arguelles, and the attorneys, Mr. Jesse George, Prosecuting Attorney for the City of Manila, and

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Mr. L. M. Southworth, Assistant Prosecuting Attorney, for the plaintiff and Messrs. Moreno, Salas and De La Rosa, attorneys for the accused. The accused, Martín Ocampo, was also present in court.

After hearing the evidence adduced during the trial of the cause, the Honorable A. S. Crossfield, after making a full finding of facts from the evidence, reached the following conclusions and rendered the following sentence on the 9th day of January, 1909:

"That the article published in the newspaper "El Renacimiento" on October 30th, 1908, as charged in the complaint, is a malicious defamation tending to impeach the honesty, virtue and reputation of Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, and is a libel.

34 "That no justifiable motive for publishing the article has been shown, neither has any evidence of its truth been given;

"That it has not been shown that this defendant, Martin Ocampo, is the author of the article;

"That this defendant, Martín Ocampo, published and caused to be published said article by providing for the printing of "El Renacimiento", in which the article appeared, and the circulation of it throughout the Philippine Islands;

"That he, as one of the proprietors of the newspaper "El Renacimiento", is chargeable with the publication of the article, even though he is not the author of it, and even though he did not personally publish or cause it to be published.

"I therefore find this defendant, Martín Ocampo, guilty as charged in the complaint, and sentence him to six months imprisonment and to pay a fine of two thousand pesos and one-fifth of the costs of this action.

"The sentence will be executed at Bilibid Prison, Manila, P. I.

"In case of insolvency and non-payment of fine, the defendant will suffer subsidiary imprisonment at the rate of two and a half pesos per day until the fine is satisfied according to law.

The record shows that the assessors agreed with the Judge in his finding of facts.

35 Trial of the Defendant Fidel A. Reyes.

On the 4th day of December, 1908, the cause against the defendant, Fidel A. Reyes, was brought on for trial. There were present at the beginning of the trial the Honorable A. S. Crossfield, one of the Judges of the Court of First Instance of the City of Manila, and the two assessors theretofore selected at the request of the defendants, Señor Edilberto Calixto and Señor Anselmo Singian; also Mr. L. M. Southworth, Assistant Prosecuting Attorney, for the plaintiff, and Messrs. Felipe Agoncillo and Felix Ferrer, attorneys for the defendants. The accused, Fidel A. Reyes, was also present in court.

After hearing the evidence adduced during the trial of the cause, the Honorable A. S. Crossfield, after making a full finding of facts

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from the evidence, reached the following conclusions and rendered the following sentence on the 9th day of January, 1909:

"That the article published in the newspaper "El Renacimiento" on October 30th, 1908, as charged in the complaint, is a malicious defamation tending to impeach the honesty, virtue and reputation of Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, and is a libel;

"That no justificable motive for publishing the article has been shown, neither has any evidence of its truth been given;

36 "That it has not been shown that this defendant, Fidel A. Reyes, is the person who actually published, or caused to actually be published, said libel, or that he was the author of it.

"A further question of fact and conclusion, however, arises.

"Section 3432 of the Compilation of the Acts of the Philippine Commission provides:

"Every author, editor, or proprietor of any book, newspaper, or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial as fully as if he were the author of the same."

"This would make any editor or proprietor of the newspaper "El Renacimiento" liable for the publication of the article complained of as fully as if he were the author of it.

"This defendant, Fidel A. Reyes, is the chief editor of the newspaper "El Renacimiento," as the word editor is used in section 3432 of the Compilation of the Acts of the Philippine Commission before referred to, and as such editor he is chargeable with the publication of the article set forth in the complaint.

"I therefore find this defendant, Fidel A. Reyes, guilty as charged in the complaint, and sentence him to six months imprisonment and to pay a fine of two thousand pesos, and one-fifth of the costs of this action.

37 "The sentence will be executed at Bilibid Prison, Manila, P. I., and in case of non-payment of fine the defendant will suffer subsidiary imprisonment at the rate of two and a half pesos per day until the fine is satisfied according to law."

The assessors in the cause against Fidel A. Reyes disagreed with the Judge in his conclusions, the reasons therefor being stated as follows:

"1. That there is no conclusive proof in the record to the effect that the article in question, and which is the subject of the complaint, directly and exclusively refers to Mr. Dean C. Worcester, but, on the contrary, the evidence for the prosecution demonstrates that all and each of the statements contained in each of the paragraphs of the said article, and which are claimed to be libelous, may refer to many persons other than Mr. Worcester, and it should be further noted that the complainant himself has absolutely denied in his testimony that he had committed any of the unlawful acts referred to in a way in each of the said paragraphs of the said article.

"There is, therefore, some doubt in the mind of the undersigned, in view of the evidence introduced by the prosecution, that the article 'Birds of Prey' as a whole is libelous per se; and, in this con-

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nection, they are of the opinion that the probative facts tending to show the existence of the crime of libel in the article in
38 question are so weak as to be incompetent to establish any libel on the part of the defendant Fidel A. Reyes.

"2. That even assuming that the said article 'Birds of Prey' is libelous per se, the liability of the defendant Fidel A. Reyes has not been clearly demonstrated.

"The court finds him guilty upon the only ground that he was the 'Redactor Jefe' (City Editor) of the newspaper 'El Renacimiento' on or about the 30th of October, 1908, when the article alleged to be libelous was published in the said newspaper.

"The mere fact that the words 'Redactor Jefe' have been rendered into English by the words 'Editor-in-Chief' is not sufficient, in the opinion of the undersigned, to make the defendant criminally responsible in this case.

"The proven facts which are the basis of the defence interposed by the accused are clear and conclusively show that he is exempt from all liability. These facts are: 1st. Because Fidel Reyes was not the Editor of 'El Renacimiento,' but his co-defendant Teodoro M. Kalaw; 2nd. Because Fidel Reyes could not, even if he wanted to, have published the said article in 'El Renacimiento' without the consent of the Editor; 3rd. Because the defendant, as a mere City Editor, could not write or publish editorial arti-
39 cles in the said newspaper, his only duties as such City Editor being to gather all local news, which had to be submitted to the Editor or Director-in-Chief before publication; 4th. Because there is no proof in the record to the effect that Fidel A. Reyes wrote the said article; 5th. Because the defendant Reyes was not the Editor of 'El Renacimiento'; and, 6th, finally because he was one of the proprietors of the paper.

"The foregoing conclusions are based also upon the testimony of the witnesses for the defence, tending to show, as it has been satisfactorily shown, that, under the organization of the Spanish and Filipino newspapers in the Philippine Islands, the person responsible in the eyes of the law for the publication of the papers is the Director of the paper; and in the present case the accused was not such Director, and could not have been the Director of said newspaper 'El Renacimiento, for the reason that Teodoro M. Kalaw was the Director of the paper.

"For the reasons above set out the undersigned are of the opinion that the defendant Fidel A. Reyes should be acquitted."

40 Trial of the Defendant Teodoro M. Kalaw.

On the 5th day of December, 1908, the cause against the defendant Teodoro M. Kalaw was brought on for trial. There were present at the beginning of the trial the Honorable A. S. Crossfield, one of the Judges of the Court of First Instance of the City of Manila, the two assessors theretofore selected at the request of the defendant, Ponciano Reyes and Geronimo José, Mr. L. M. Southworth, Assistant Prosecuting Attorney, for the plaintiff, and Messrs. Felipe Agoncillo, Roberto Moreno, Fernando Salas and Ramon Diokno,

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attorneys for the defendant. The accused, Teodoro M. Kalaw, was also present in court.

After hearing the evidence adduced during the trial of the cause, the Honorable A. S. Crossfield, after making a full finding of facts from the evidence, reached the following conclusions and rendered the following sentence on the 8th day of March, 1909:

"That the article published in the newspaper 'El Renacimiento' on October 30th, 1908, as charged in the complaint, is a malicious defamation, tending to impeach the honesty, virtue and reputation of Dean C. Worcester, a member of the Philippine Commission, and Secretary of the Interior of the Philippine Islands, and is a libel;

"That the article being published, as appears from the showing made by the defense, upon the facts adduced by it at the trial, the malice of its statements is only accentuated;

41 "That no justifiable motive for publishing the article has been shown, neither has any evidence of its truth been given.

"That it has not been shown that this defendant, Teodoro M. Kalaw, is the author of the article;

"That this defendant, Teodoro M. Kalaw, as director and editorial manager of 'El Renacimiento' is responsible for any article appearing therein, and thus was responsible for the publication of the article complained of;

"That while this defendant, Teodoro M. Kalaw, is not whown to be the author of the article complained of, he is chargeable with its publication, under the provisions of Section 3432 of the 'Compilation of the Acts of the Philippine Commission,' which is as follows:

"Every author, editor, or proprietor of any book, newspaper or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial as fully as if he were the author of the same."

as an editor of "El Renacimiento."

"I therefore find this defendant, Teodoro M. Kalaw, guilty as charged in the complaint, and sentence him to nine months' imprisonment, and to pay a fine of three thousand pesos, and one-fifth of the costs of this action.

"In case of insolvency and non-payment of the fine imposed, the said defendant will suffer subsidiary imprisonment at the rate of two and a half pesos per day until the fine is satisfied according to law.

"This sentence will be executed at Bilibid Prison, Manila, P. I.

It appears of record that the said assessors entirely agreed with the sentence of the Judge.

42 Trial of Defendant Lope K. Santos.

After hearing the evidence adduced during the trial of the cause against the defendant Lope K. Santos, the Honorable A. S. Crossfield, together with the assessors selected, found that the evidence was insufficient to support the complaint and therefore the cause against the said Lope K. Santos was dismissed and he was discharged from custody.

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Trial of the Defendant Faustino Aguilar.

After hearing the evidence adduced during the trial of the cause against the defendant Faustino Aguilar, the Honorable A. S. Crossfield, together with the assessors selected, found that the evidence was insufficient to support the complaint and therefore the cause against the said Faustino Aguilar was dismissed and he was discharged from cutody.

43 The defendants, Martín Ocampo, Fidel A. Reyes and Teodoro Kalaw, duly appealed from the sentence of the lower court and each made assignments of error in this court, some of which are as follows:

"1. The court erred in issuing the warrant of arrest and proceeding with the trial of the defendant without any preliminary investigation of the complaint being made.

"2. The court erred in holding that Act No. 612 is not unconstitutional.

"3. The court erred in assuming jurisdiction of the complaint herein filed.

"4. The court erred in holding that the facts alleged in the complaint constitute the crime of libel.

"5. The court erred in admitting as evidence on behalf of the prosecution the opinion of witnesses.

With reference to these assignments of error, the first three we think may logically be considered together. Under these assignments of error, the appellants contend:

(*a*) That they were entitled, as of right, to a preliminary investigation;

(*b*) That the court committed an error in issuing the warrant for their arrest and proceeding with the trial, without first giving them a preliminary hearing;

(*c*) That they were deprived of their liberty without "due process of law";

(*d*) That in the absence of a preliminary examination, the court was without jurisdiction to try them; and

(*e*) That Act 612 of the Philippine Commission is unconstitutional.

44 With reference to the necessity of a preliminary examination, under the procedure adopted for the City of Manila, this court has decided in the cases of U. S. vs. Wilson (4 Phil. Rep. 317), and U. S. vs. McGovern, (6 Phil. Rep. 621), and others, that defendants in criminal causes are not entitled to a preliminary examination.

In the case of the United States vs. Wilson, supra, this Court said, speaking through Mr. Justice Willard, now United States Judge of the District of Minnesota:

"It is claimed, also, that the judgment of conviction is erroneous because no preliminary investigation was held, as required by sections 12 and 13 of General Orders No. 58. This claim is answered by reference to Act 612 of the Commission, which in section 2 provides as follows:

'In cases triable only in the Courts of First Instance of the City of Manila, the defendant shall have a speedy trial, but shall not be entitled, as of right, to a preliminary examination in any case where the prosecuting attorney (of the City of Manila) after due investigation of the facts, under section 39 (Act 183, the charter of the City of Manila) of the act of which this is an amendment, shall have presented an information against him in proper form."

In the case of the United States vs. McGovern, supra, this Court, speaking through its Chief Justice, Mr. Arellano, said (citing and relying upon said Act 612):

"The investigation made by the judge was not substantially defective, nor was it necessary, and this is the most important, the complaint having been presented to the Court of First Instance of the City of Manila, in which an accused person is not entitled, as a matter of right, to a preliminary investigation, and consequently no law or statute has been violated, and due process of law has not been lacking."

45 The appellants contend that to arrest a defendant in a criminal cause in the Philippine Islands and bring him to trial, without first giving him a preliminary examination when he demands it, is to deprive him of his liberty, without due process of law. This contention is based upon certain paragraphs of section 5 of the Act of Congress of July 1st, 1902, known as the Philippine Bill, which, among other things, provide as follows:

"No person shall be held to answer for a criminal offense, without due process of law. * * *

"And no warrant shall issue but upon probable cause, supported by oath or affirmation."

It will be noted that there is nothing in the said bill (Philippine Bill) which defines or attempts to define what is meant by the phrase "due process of law". The Philippine Bill does not expressly require a preliminary examination and, therefore, unless a preliminary examination is a necessary step in "due process of law" or for the "issuance of a warrant of arrest", said Act 612 can not be regarded as unconstitutional, regarding the Philippine Bill as the constitution protecting the life, liberty and property of the people of the Philippine Islands. It will be noted, also, that the Philippine Bill was enacted by Congress on the 1st of July, 1902, and that Act 612 was enacted by the Philippine Commission on the 3rd of February, 1903. The legislative department of the Government, therefore, must have had in mind, when it denied to defendants the right of a preliminary examination, in the City of Manila, the provisions of the Philippine Bill.

46 By reference to the proceedings in the court below preceding the arrest of the defendant- (all of which is set out above), it will be seen that the procedure adopted by Act 183 (charter of the City of Manila), as amended by said Act 612, was followed; therefore the question is presented—Does such procedure constitute due process of law? This phrase has been discussed a great many times by the Supreme Court of the United States, by the Supreme Courts of the different states and by all of the writers

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upon questions of constitutional law. The requirement above quoted from the Philippine Bill relating to due process of law is found in the constitution of practically all of the States of the Union. It is sometimes couched in the language that persons shall not be deprived of their life, liberty or property except by "the law of the land." In others the phrase is "due process of law". These different phrases, however, have been given practically the same definition by the different courts which have attempted an explanation of their meaning. The phrase "due process of law" has been variously defined. Judge Storey, in his work on Constitutional Law, defines it as "The law in its regular course of administration, through the courts of justice."

Judge Cooley, in his work on Constitutional Limitations, says:

"Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

47 But even though it be contended that a preliminary examination is a necessary step in "due process of law," then we reply that a preliminary examination was held in the present case by the prosecuting attorney of the city of Manila, as will appear from his sworn statement. Certainly it will not be contended that he is not as competent to conduct a preliminary examination as the average person designated by the law for that purpose. He is a sworn officer of the court and the law makes it his duty to make these investigations. The legislature may designate whomsoever it pleases, within the judicial department, for that purpose. The prosecuting attorney is a sworn official of the government and is just as likely to be free from prejudice as any other official who might be appointed or designated.

It may be argued also that Act 612 is a special law applicable to the city of Manila alone and is for that reason unconstitutional. In reply to that argument it may be said:

(*a*) That there is no requirement that all the laws in the Philippine Islands shall be alike applicable throughout the Islands;

(*b*) That the city of Manila is governed by a special charter and has such powers as are expressly or impliedly given to it without reference to the powers given to the other municipalities;

(*c*) That it has special courts with special jurisdiction which other municipalities do not have;

(*d*) It has its own method of levying and collecting taxes,
48 which is different from the method of other municipalities;

(*e*) It has its own officials with special functions, some of which other municipalities do not have;

(*f*) It has many special powers, such as to make and enter into certain classes of special contracts, which other municipalities do not have.

It would be just as logical to hold that all of the other special provisions for the city of Manila are unconstitutional, as to hold that the one in question is contrary to the Philippine Bill, simply

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because they are not applicable throughout the Philippine Islands. To hold thus would mean that the legislature could not grant to particular municipalities any special rights or impose upon them any special obligations which were not applicable to all the municipalities.

"Due process of law" is not ironclad in its meaning. It does not necessarily mean a particular procedure. The national government may adopt one procedure satisfying the requirement and the state government may adopt still another, and not only that, but each state may adopt an entirely different procedure from that adopted either by the national government or by any of the sister states, provided always that the procedure adopted in each jurisdiction fully furnishes protection to life, liberty and property.

Hurtado vs. State of California (110 U. S. 516);
Baldwin vs. State of Kansas (129 U. S. 57);
Caldwell vs. State of Texas (137 U. S. 698);
Leeper vs. State of Texas (139 U. S. 468);
McNulty vs. State of California (149 U. S. 648);
Hodgson vs. State of Vermont (168 U. S. 272);
Brown vs. State of New Jersey (175 U. S. 175);
49 Bolln vs. State of Nebraska (176 U. S. 83);
Keetz vs. State of Mich. (188 U. S. 508);
Mankichi vs. Territory of Hawaii (190 U. S. 211);
Dorr vs. U. S. (195 U. S. 138);
Kepner vs. U. S. (195 U. S. 100);
Munn vs. State of Illinois (94 U. S. 113).

In the case of the United States vs. Dorr (195 U. S. 138), Mr. Justice Day, speaking for the Court, said:

"The Spanish system in force in the Philippines, gave right to the accused to be tried before judges, who acted in effect as a court of inquiry and whose judgments were not final until passed in review before the audiencia or Supreme Court, with right of final review and power to grant a new trial for errors of law in the Supreme Court at Madrid. To this system the Philippine Commission, in executing the power conferred by the orders of the President and sanctioned by Act of Congress, act of July 1, 1902, 32 Stat. 691, has added: (1) a guaranty of the right of the accused to be heard by himself and counsel; (2) to demand the nature and cause of the accusation against him; (3) to have a speedy and public trial; (4) to meet the witnesses against him face to face; (5) to have compulsory process to compel the attendance of witnesses in his behalf; and (6) that no person shall be held to answer for a criminal offense without due process of law, nor be put twice in jeopardy of punishment for the same offense, nor compelled in any criminal case, to be a witness against himself. It can not be successfully maintained that this system does not give an adequate and efficient method of protecting the rights of the accused, as well as executing the criminal law by judicial proceedings,
50 which give full opportunity to be heard by competent tribunals before judgment can be announced."

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The requirement that no person shall be held to answer for a criminal offense without "due process of law" simply requires that the procedure established by law shall be followed. If that procedure fully protects the life, liberty and property of the citizens in the state, then it will be held to be "due process of law."

The procedure provided for the arrest and trial of defendants in the City of Manila fully guarantees all of the rights mentioned in the Philippine Bill. Such procedure is not, therefore, in conflict with the provisions of the Philippine Bill and is constitutional.

The provision that no warrant shall issue but upon probable cause supported by oath or affirmation is an provision in the Philippine Bill. The question whether "probable cause" exists or not must depend upon the judgment and discretion of the judge or magistrate issuing the warrant. It does not mean that particular facts must exist in each particular case. It simply means that sufficient facts must be presented to the judge or magistrate issuing the warrant to convince him, not that the particular person has committed the crime, but that there is probable cause for believing that the person whose arrest is sought committed the crime charged. No rule can be laid down which will govern the discretion of the court in this matter. If he decides, upon the proof presented, that probable cause exists, no objection can be made upon constitutional grounds against the issuance of the warrant. His conclusion as to whether "probable cause" existed or not is final and conclu-
51 sive. If he is satisfied that "probable cause" exists from the facts stated in the complaint, made upon the investigation by the prosecuting attorney, then his conclusion is sufficient upon which to issue the warrant for arrest. He may, however, if he is not satisfied, call such witnesses as he may deem necessary before issuing the warrant. The issuance of the warrant of arrest is prima facie evidence that, in his judgment at least, there existed "probable cause" for believing that the person against whom the warrant is issued, is guilty of the crime charged. There is no law which prohibits him from reaching the conclusion that "probable cause" exists from the statement of the prosecuting attorney alone, or any other person whose statement or affidavit is entitled to credit in the opinion of the judge or magistrate.

The appellants contend that under the 4th assignment of error, the court committed an error in holding that the facts alleged in the complaint constitute the crime of libel. The particular parts of the said editorial charged in the information as libelous are as follows:

"Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to copy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

"Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and

putrid meat which he himself was obliged to condemn by virtue of his official position.

52 "Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less flourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

"Giving admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

"Promoting through secret agents and partners the sale to the city of worthless land at fabulous prices, which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

"Patronizing concessions for hotels, on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people."

The information alleges that the publication related to Mr. Dean C. Worcester, and that the defendants intended and did charge the said Dean C. Worcester with prostituting his office as a member of the Philippine Commission and as Secretary of the Interior of the Philippine Islands for private ends; with squandering the public funds for the purpose of promoting his personal welfare; with violating the laws of the Philippine Islands and the ordinances of the City of Manila; with entering into illegal combinations for the purpose of robbing the people; with the intent of gain to himself and other individuals; and that the said defamation would be and was so understood by the inhabitants of the City of Manila, the officials of the government and the people of the Philippine Islands generally to accuse the said Dean C. Worcester of the con-

53 duct and acts and things set out in the said complaint, and to state and publish by innuendo and inference, that he, the said Dean C. Worcester, was guilty of the said acts, deeds and doings; all of which allegations regarding the conduct and character of the said Dean C. Worcester, as above set forth, were charged to be false and without foundation in fact.

In our opinion these charges, if false, are clearly libelous; therefore the lower court committed no error in over-ruling said demurrer. We think that the information contains sufficient facts to constitute a cause of action for libel.

The theory of the defense is that the alleged libelous editorial does not apply to the said Dean C. Worcester. That is a question of proof. It is charged that they do. If they do, then they tend to impeach the honesty, virtue and reputation of Mr. Worcester

and to expose him to public hatred, contempt and ridicule, and are, therefore, libelous.

Under the 5th assignment of error above noted, the defendants and appellants contend that the court committed an error in permitting witnesses to give their opinion upon the question whether or not the words in the said editorial apply to Mr. Dean C. Worcester. The Solicitor General, in his very able brief presented to this Court, cites many authorities in support of the ruling of the lower court. Among these authorities are

18 American and English Encyclopedia of Law, at page 996, Note 2;
Russell vs. Kelley, 44 Cal. 642;
Inquirer Company vs. Johnston, 72 Fed. Rep. 443;
State vs. Mason, 35 Pac. Rep. 130;
People vs. Richey, 42 Pac. Rep. 209.

54 In the present case a number of witnesses, among whom were the Honorable James F. Smith, then Governor-General of the Philippine Islands, the Honorable Gregorio Araneta, then and now Secretary of Finance and Justice of the Philippine Islands, Honorable Newton W. Gilbert, Secretary of Public Instruction, were called for the purpose of showing that the statements made in said editorial were intended to apply to the Honorable Dean C. Worcester, Secretary of the Interior. Each of the witnesses testified that he was acquainted with Mr. Worcester, that he had read the said editorial, and that, in his opinion, the statements made therein were intended to and did apply to the Honorable Dean C. Worcester and to no other person or persons. The defendants duly objected to these questions and excepted to the ruling of the court admitting them.

In the case of Russell vs. Kelley, supra, the action was for libel founded upon certain publications made by the defendant, in which the name of the plaintiff was not mentioned. At the trial, witnesses were called by the plaintiff to testify that they were acquainted with the parties and familiar with the relations which existed between them immediately prior to the date of the publications; that on reading the publications they understood the parties to be *the* one of the persons referred to. The plaintiff also offered in evidence a subsequent publication made by the defendant (in which the plaintiff was referred to by name) for the purpose of identifying

55 him as one of the persons to whom the preceding publication referred. Objection was duly made to this proof and over-ruled by the lower court. The Supreme Court in deciding the question presented said:

"The rule as laid down in 2 Starkie on Slander, p. 51, is that the application of the slanderous words to the plaintiff, and the extrinsic matters alleged in the declaration, may be shown 'by the testimony of the witnesses who knew the parties and circumstances, and who can state their judgment and opinion on the application and meaning of the terms used by the defendant'. At page three hundred and twenty-one it is said that where it is ambiguous on

the face of the libel to whom it was intended to be applied, 'the judgment and opinion of witnesses, who from their knowledge of the parties and circumstances are able to form a conclusion as to the defendant's intention and application of the libel, is evidence for the information of the jury.' The same rule is stated in almost the same language in 2 Greenl. Evidence, sec. 417. The correctness of this rule is not only established by the weight of authority, but is supported by every consideration of justice and sound policy. I am, therefore, of opinion that there was no error in admitting oral testimony to show the application of the alleged libel to the plaintiff."

In the case of the Inquirer Company vs. Johnston, supra, the witness was asked a question almost identically similar to the question asked in the present case, to-wit:

"Q. You may state Mr. Barnett (the witness) after reading the article (meaning the publication in question) to whom did you understand it to refer when it spoke of Mr. Johnson's intimacy with the wife of a deceased brother?"

The witness (Mr. Barnett) answered as follows:

"A. I understood it to mean Mr. Johnston and a widow who had come from Australia, that he sent for."

56 To this question and answer the defendants objected and the court, in passing upon the objection, said:

"In Odgers on Libel and Slander (page 567) it is said, 'The plaintiff may also call at the trial his friends and others acquainted with the circumstances, to state that, on reading the libel, they at once concluded that it was aimed at the plaintiff. It is not necessary that all the world should understand the libel; it is sufficient that those who know the plaintiff can make out that he is the person meant.' To the same effect is the text in Falkard's Starkie on Libel and Slander. (4th Eng. Ed. p. 589).

* * * * * * *

"One's reputation is the sum or composite of the impressions spontaneously made by him from time to time, and in one way or another, upon his neighbors and acquaintances. The effect of a libelous publication upon the understanding of such persons, involving necessarily the identity of the individual libeled, is of the essence of the wrong. The issue in a libel case concerns not only the sense of the publication, but, in a measure, its effect upon a reader acquainted with the person referred to. The accuracy of the witness as to identity may be tested by cross-examination. At all events, and in view of the answer of Mr. Barnett, which appears to be the only matter in the record suggesting the possibility

57 that there might have been some 'wife of a deceased brother' other than this defendant in error to whom the publication in fact referred, this court can not hold the error in question well assigned."

While the action of the Inquirer Company vs. Johnston, supra, was a civil action for damages, yet the rule in a criminal action is the same. (25 Cyc. 582.)

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In the case of the People vs. Ritchie, supra, the court, in deciding the same question presented here, said:

"We think the weight of authority supports the view that when the person sought to be libeled is designated in an ambiguous manner, testimony may be given that the publication was understood to mean the person alleged to be libeled. 2 Greenl. Ev. 417; Nelson vs. Borchenius, 52 Ill. 236; Smith vs. Miles, 15 Vt. 245; Russell vs. Kelley, 44 Cal. 641; 2 Starkie Sland. & L. 51, 321; Smart vs. Blanchard, 42 N. H. 146; Miller vs. Butler, 6 Cush. 71, Leonard vs. Allen, 11 Cush. 241; Farrand vs. Aldrich (Mich.) 48 N. W. 628; However, if the admission of this evidence was error, it was harmless, because the record before us conclusively establishes the fact that Frank E. McGurrin was the person referred to in the article. (Farrand vs. Aldrich, supra; 13 Am. & Eng. Enc. Law, 486; 3 Lawson, Rights Rem. & Prac. 1244."

58 Our conclusion is, therefore, with reference to this assignment of error, that in a criminal action for libel, where the publication is ambiguous as to the person to whom it applies, the testimony of persons who read the publication is admissible for the purpose of showing who is intended to be designated by the words in said publication, and that the court committed no error in admitting the testimony of the various witnesses for that purpose.

59 *Special Defenses of the Appellant, Martin Ocampo.*

In addition to the foregoing assignments of error made by each of the appellants, the appellant, Martin Ocampo, made the following:

"1. The Court erred in declaring that the crime of libel was proved at the trial.

"2. The Court erred in holding that the accused is one of the owners of "El Renacimiento".

"3. The Court erred in holding that Martín Ocampo published and caused to be published the article in question, using "El Renacimiento" therefor, and the circulation thereof throughout the Philippine Islands.

"4. The Court erred in convicting the accused."

With reference to the first above assignment of error, the appellant, Martín Ocampo contends that the evidence fails to show that the crime of libel had been committed. Upon this contention of the defendant, from an examination of the evidence adduced during the trial, we are of the opinion that the proof shows that the editorial in question did refer to the Honorable Dean C. Worcester, and from an examination of the said editorial we find that he is charged with "ascending the mountains of Benguet to copy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself, thanks to legal facilities made and unmade at will, but always for his own benefit;" with authorizing * * * an illegal slaughter of diseased cattle in order to

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derive benefit from the infected and putrid meat * * *;"
60 with "giving an admirable impulse to the discovery of wealthy lodes * * * with the money of the people, and under the pretext of the public good, when, as a matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal wealth, as is shown by the acquisition of immense properties registered under the names of others;" with "promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices;" * * * with "patronizing concessions for hotels * * * at the expense of the blood of the people."

These charges, in our opinion, if not proved to be true, constitute a malicious defamation, expressed in writing, tending to impeach the honesty and reputation of Dean C. Worcester and expose him to public hatred, contempt and ridicule, and are, therefore libelous. It was proven that the said alleged libel was published and circulated throughout the Philippine Islands and will be presumed to have been published with malice, no justifiable motive having been proven for making it. In our opinion the lower court committed no error in declaring that the evidence adduced during the trial of the cause clearly demonstrated that the crime of libel had been committed.

With reference to the second assignment of error, to-wit: that the court erred in holding that the accused is one of the owners of "El Renacimiento", an examination of the proof shows, beyond question, that Mr. Ocampo was the administrator, manager and one of the proprietors of the newspaper known as "El Renacimiento", published at No. 26 Calle Gunao, in the city of Manila, on
61 the 30th day of October, 1908, and had been such administrator, manager and part proprietor of the said newspaper for some time theretofore. The lower court, therefore, committed no error in declaring that the said Martín Ocampo was one of the owners of "El Renacimento."

With reference to the third above assignment of error, to-wit: that the court erred in holding that Martín Ocampo published and caused to be published the article in question, using "El Renacimiento" therefor and the circulation thereof, throughout the Philippine Islands, from the evidence adduced during the trial it clearly appears, and there is no proof to the contrary, that Mr. Ocampo was one of the owners of "El Renacimiento" and was its administrator.

Section 6 of Act 277 provides: that "Every author, editor or proprietor of any book, newspaper or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial, as fully as if he were the author of the same." It will be noted that this article provides that, "Every * * * proprietor of any newspaper * * * is chargeable with the publication of any words contained in any part of * * * each newspaper * * * as fully as if he were the author of the same."

This article has been interpreted in the case of the United

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States vs. Ortiz (8 Phil. Rep. 753). In that case this court, speaking through Mr. Justice Torres, said:

62 "With regard to Jose Gonzales Paramos, his culpability arises from the proven fact that he was at the time the proprietor of the printing plant which printed the Revista Catolica, and therefore responsible for publishing the libel. He was at the same time the printer and editor of the Revista by virtue of a contract for a certain consideration made by and between him and the Centro Católico, and is, therefore, likewise liable for the crime charged.

"By means of his printing plant, and with his express consent, among others the issue No. 27 of the Revista dated February 6, 1904, containing the libelous matter complained of, was printed and published. By so doing he has rendered himself guilty, together with the director of the Revista, of the crime as defined in section 2 of Act No. 277.

"According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same by reason of his direct connection therewith and his cognizance of the contents thereof. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers."

This decision would seem to be conclusive against the contention of the appellant. However an examination of the jurisprudence of other jurisdictions shows clearly that the same doctrine has been established elsewhere.

In the case of State vs. Mason (26 L. R. A., 779; 26 Oregon, 273; 46 American State Reports, 629;) the question of the responsibility of the manager or proprietor of a newspaper was discussed. The court said, among other things:

"The question recurs as to whether the manager *od* proprietor of a newspaper can escape criminal responsibility solely on the ground that the libelous article was published without his knowledge or consent. When a libel is published in a newspaper, such fact alone is sufficient evidence prima facie to charge the manager or proprietor with the guilt of its publication. * * *

"The manager and proprietor of a newspaper we think ought to be held prima facie liable criminally for whatever appears in his paper; and it should be no defense that the publication was made without his knowledge or consent. * * *

63 "One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employés whom he selects and controls, may be said to cause to be published what actually appears, and should be held responsible therefor, whether he was individually concerned in the publication or not. Criminal responsibility for the acts of an agent or servant in the course of his employment necessarily implies some degree of guilt or delinquency on the part of the publisher. * * *

"We think, therefore, the mere fact that the libelous article was

published in the newspaper without the knowledge or consent of its proprietor or manager is no defense to a criminal prosecution against such proprietor or manager."

In the case of Commonwealth vs. Morgan (107 Mass. 197) this same question was considered and the court held that in the criminal prosecution of a publisher of a newspaper in which a libel appears, he is prima facie presumed to have published the libel, and that the exclusion of an offer by the defendant to prove that he never saw the libel and was not aware of its publication until it was pointed out to him and that an apology and retraction were afterwards published in the same paper, gave him no ground for exception. In this same case, Mr. Justice Colt, speaking for the Court, said:

"It is the duty of the proprietor of a public paper which may be used for the publication of improper communications, to use reasonable caution in the conduct of his business that no libels be published."

Horton's Criminal Law, sections 1627, 1649;
1st Bishop's Criminal Law, Sections 219, 221;
People vs. Wilson, 64 Ill. 195;
Commonwealth vs. Damon, 136 Mass. 441.

The above doctrine is also the doctrine established by the English courts. In the case of Rex vs. Walter, (3 Esp. 21) Lord Kenyon said that he was "clearly of the opinion that the proprietor of a newspaper was answerable criminally as well as civilly for
64 the acts of his servants or agents for misconduct in the management of the paper."

This was also the opinion of Lord Hale, Mr. Justice Powell and Mr. Justice Foster.

Mr. Lofft, an English author, in his work on libel and slander, said:

"An information for libel will lie against the publisher of a paper, although he did not know of its being put into the paper and stopped the sale as soon as he discovered it."

In the case of People vs. Clay (86 Ill. 147) the Court held that: "A person who makes a defamatory statement to the agent of a newspaper for publication, is liable both civilly and criminally, and his liability is shared by the agent and all others who aid in publishing it."

We are of the opinion that not only is the decision of the lower court, upon the question to which this assignment of error relates, sustained by sound jurisprudence, but by the express provisions of said article 6 (Act 277). Said article 6 provides that "Every author * * * is chargeable with the publication". * * * "Every editor is chargeable with the publication" etc. * * * "Every proprietor of any * * * newspaper * * * is chargeable with the publication of any words contained in any * * * number of each newspaper * * * as if he were the author of the same."

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Our conclusion is, in relation to this assignment of error, that the lower court committed no error in holding the defendant liable.

65 Special Defences of the Appellant Teodoro M. Kalaw.

The defendant and appellant, Teodoro M. Kalaw, made the following assignments of error:

"1. The trial court erred in allowing the prosecution to introduce evidence consisting of the mere opinion of the witnesses with reference to the meaning of the article alleged to be libelous.

"2. The trial court erred in permitting incompetent witnesses to give their opinion as to the meaning of the article alleged to be libelous.

"3. The trial court erred in giving greater weight to the opinion of the witnesses for the prosecution than to the more competent expert testimony of the witnesses for the defence.

"4. The trial court erred in finding that the article which is the subject of the complaint only and necessarliy refers to Mr. Worcester.

"5. The trial court erred in finding that the issues of 'El Renacimiento', Exhibits 'B' and 'C' of the prosecution, indicate that the editorial alleged to be libelous refers to Dean C. Worcester.

"6. The trial court erred in finding that the crime of libel had been committed.

"7. The trial court erred in finding that the defence has failed to show that there were any justifiable motives for the publication of the article claimed to be libelous.

"8. The trial court erred, finally, in convicting the defendant Teodoro M. Kalaw."

66 The above assignments Nos. 1, 2, 3, 4, 5, and 6 have been sufficiently answered in the discussion of the preceding assignments of error. We deem it unneccessary, therefore, to repeat the argument here.

Under the 7th assignment of error the appellant, Teodoro M. Kalaw, contends that the lower court committed an error in holding that the records do not show justifiable motives in publishing the alleged libelous article. Upon this question the Honorable A. S. Crossfield, in rendering his sentence in the court below, said:

"There was an attempt to justify the article (the editorial) on the ground that wrongs had been committed by some one in authority which should be righted and that the article was intended to call attention to the wrongs to have them righted, but the attempt failed utterly. No wrong or evil, as stated in the article, was found to exist.

"In the attempt to justify, the defendant attempted to show that the article was prepared and published upon information received after investigation made, and because the subject matter of some portions of it had appeared in other newspapers, which were taken to be true, but the evidence in this behalf did not establish the truth

of any libelous statement in the article, or that the article was justified upon information at hand when it was published, as appears from the evidence."

An examination of the evidence brought to this court, in our opinion fully justifies the conclusion of the lower court upon the question of justifiable motives.

The Attorney General in his brief said:

"The testimony of witnesses such as those who testified to Mr. Worcester's ownership of land in Mindoro, Nueve Ecija and Benguet is so unreliable and so rebutted by such eminently trustworthy witnesses for the Government, that the evidence to this end results in nullity. The same conclusion applies to all the appellant's attempts to show justifiable motives."

67 The burden of showing justifiable motives rests upon the persons responsible for the publication of a libel.

U. S. vs. Prautch (10 Phil. Rep. 562);

Hern vs. de Young (119 Cal. 607).

Before the commencement of the trial in the court below of the cause against the defendant Kalaw he gave notice to the court that his defense consisted in proving the truth of each and all of the facts mentioned in said allegel libelous editorial. (See record, page 219.)

Section 4 of Act 277 (the Libel Law) holds that the truth in criminal prosecutions for libel may — given in evidence to the court, and if it appears to the court that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; otherwise he shall be convicted; but to establish this defense (the truth of the publication), not only must (*a*) the truth of the matter so charged be proven, but also, (*b*) that it was published with good motives and for justifiable ends. Then, under this section the alleged libelous matter must not only be proved to be true, in order to constitute a defense, but it must be proved that it was published both with good motives and for justifiable ends.

In the present case the lower court found from the evidence that the proof adduced by the defense did not prove the truth of the facts charged in the alleged libelous editorial. Upon an examination of the evidence brought to this court, we are of the opinion that the evidence adduced by the defendant in no way approaches proving the truth of the libelous allegations. The law will not allow

68 one person to injure another by an injurious publication under the cloak of "good ends" or "justifiable motives", when as a matter of fact, the publication was made with malicious intent. When malice in fact is found to exist, the publisher can not be relieved from liability by pretence of "justifiable motives." The publication of a malicious defamation, whether it be true or not, is clearly an offense uncer Act 277. (U. S. vs. Bustos, 13 Phil. Rep. 690; U. S. vs. Prautch, 10 Phil. Rep. 562.) The truth of the facts stated in the alleged libelous editorial not having been proved, the

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defense of "good motives" and "justifiable ends" can not be sustained. (Section 4, Act 277.)

U. S. vs. Lerma, 2 Phil. Rep. 254;
U. S. vs. Crozier, 5 Phil. Rep. 621;
U. S. vs. Prautch, supra;
U. S. vs. Bustos, supra.

The lower court committed no error in holding that the defense of "justifiable motives" was not shown in publishing the alleged libelous article.

69 Special Defenses of the Appellant Fidel A. Reyes.

The appellant, Fidel A. Reyes, in addition to the assignments of error above discussed, also made the following assignment of error:

"3rd. The Court erred in holding that the defendant published and caused to be published the editorial referred to in the complaint, and in convicting him of said crime."

The lower court in rendering its decision against this defendant, (Reyes) said:

"This defendant (Fidel A. Reyes) is the chief editor of the newspaper "El Renacimiento" as the word editor is used in section 6 of Act 277 above referred to, and as such editor is chargeable with the publication of the article set forth in the complaint."

The Solicitor General, after discussing the evidence pro and con relating to the defendant Reyes, refused to make any recommendation concerning him.

The evidence shows that Fidel A. Reyes was the "redactor jefe" of "El Renacimiento" at the time of the publication of the said alleged libelous editorial. Many witnesses were called for the purpose of showing the duties of the "redactor jefe." The conclusions of the Solicitor General relating to the said duties, are found in the following quotation:

"The duties of the "redactor jefe" are 'in general to centralize and examine rough copy which comes in, requests for publication, etc. and to properly edit it, and this work he afterwards submits to the director, without whose approval it cannot be published."

70 Mr. W. B. Watson was called as a witness on rebuttal by the government, and testified that the position of "redactor jefe" corresponded generally to that of city editor on American papers, who oversee news matter, edit the reporter's copy and can write editorials, which, if approved, are published.

Macario Adriatico was called as a witness, and after stating the experience which he had had as director of newspapers in the Philippine Islands, testified that the position of "director jefe" was subordinate to the director, and that the publication of editorials was exclusively under the control of the director. It appears from the evidence, under the system of editing publications in the Philippine Islands, that the "redactor jefe" has no control whatsoever of the publishing of newspapers. Neither was it proven in the present case that he was the author or proprietor of the said newspaper. We find

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no sufficient evidence in the record to justify the conviction of the defendant, Fidel A. Reyes.

After a careful consideration of the record brought to this court, of the evidence adduced pro and con during the trial of the cause, and a full consideration of the law applicable to such facts, we have arrived at the following conclusions:

1st. That the sentence of the lower court with reference to the defendant Martin Ocampo should be and is hereby affirmed, and he is hereby sentenced to be imprisoned for a period of six months and to pay a fine of P2,000.00, to pay one-fifth part of the costs of the action in the lower court and one-third part of the costs in this court, and in case of insolvency to suffer subsidiary im-
71 prisonment in accordance with the provisions of Act 1732.

2nd. That the sentence of the lower court imposed upon the defendant, Teodoro M. Kalaw, in view of the high character of the person libeled and the dignity of the office which he held at the time the libel was published, and in view of the fact that the defendant attempted to prove the truth of the alleged libelous publication and his failure so to do, thereby practically repeating and republishing the libel; and in view of the recommendation of the Attorney-General, we are of the opinion that the sentence of the lower court should be modified, and that the defendant, Teodoro M. Kalaw should be sentenced to be imprisoned for a period of twelve months, to pay a fine of P3,000.00, one-fifth part of the costs of the action in the lower court and one-third part of the costs in this court, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of Act 1732.

3rd. That the sentence of the lower court imposed upon the defendant Fidel A. Reyes, because of insufficiency of the proof adduced during the trial of the cause, should be revoked and the complaint as to him should be dismissed, with costs de oficio.

After the expiration of 10 days from the notice hereof let final judgment be entered in accordance herewith, and 10 days thereafter let the record be remanded to the court whence it came for
72 such action as may be proper under the law.

It is so ordered.

(Signed) E. FINLEY JOHNSON.

We concur:

(Signed) C. S. ARELLANO.
" FLORENTINO TORRES.
" SHERMAN MORELAND.
" GRANT TRENT.

Filed in the Clerk's Office December 22, 1910.

(Signed) J. E. BLANCO, *Clerk.*

73 Thereafter and on the 23rd day of December, 1910, both counsel for the Government and for the accused were duly notified of the foregoing decision of the Supreme Court.

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Thereafter and on the 24th day of December, 1910, the following petition was presented to the Supreme Court by counsel for the accused:

(Title of Court and Cause Omitted.)

"Exception.

"The undersigned counsel, in behalf of the accused and appellants, appears and states:

"That he has this day been notified by mail of the decision rendered in the above entitled cause, sentencing the defendant Martin Ocampo to six months' imprisonment and to pay a fine of P2,000.00, to pay one-fifth of the costs of first instance and one-third of the costs of this appeal, and to suffer, in case of insolvency, the corresponding subsidiary imprisonment, in conformity with the provisions of Act No. 1732.

"And Teodoro M. Kalaw to the penalty of twelve months' imprisonment, to pay a fine of P3,000.00, one-fifth of the costs of first instance and one-third of the costs of this appeal, and to suffer, in case of insolvency, subsidiary imprisonment in accordance with the provisions of Act No. 1732.

"Said decision being, in the humble opinion of the ac-
74 cused and appellants, prejudicial to their rights, they hereby except to the same.

"Wherefore, the undersigned counsel, in behalf of the said accused and appellants, respectfully ask this honorable court to order that this exception be duly noted and that they be reserved the right to file a motion or petition for a reconsideration within the time provided by law.

"Manila, December 24th, 1910.

(Signed) "FELIPE AGONCILLO,
"Counsel for Defendants and Appellants."

Thereafter and on the 27th day of December, 1910, the Supreme Court ordered that the foregoing exception of counsel for defendants be duly noted and that his motion be attached to the record.

Thereafter and on the 29th day of December, 1910, counsel for defendants and appellants filed the following motion:

(Title of Court and Cause Omitted.)

"Now come the defendants and appellants in the above entitled cause and respectfully ask this honorable court to reconsider its decision therein, for the following reasons:

75 I.

"The Court erred in failing to declare that Act No. 612 of the Philippine Commission, section 2, which deprives a person accused in the Court of First Instance of the City of Manila, in cases falling

under its exclusive jurisdiction, of the right to demand the preliminary investigation provided for in an imperative manner by General Orders No. 58, is unconstitutional.

II.

"The court erred in failing to declare that the arrest of the defendants under and by virtue of a warrant issued by the court below in this case, without first conducting the necessary preliminary investigation, was illegal.

III.

"The court erred in failing to sustain defendants' demurrer to the complaint which was the basis of the criminal proceedings had in this case.

IV.

"The court erred in failing to hold that Act No. 612, section 2, had not been repealed by Act No. 1627, section 37, both acts having been promulgated by the Philippine Commission.

V.

"The court erred in failing to hold that General Orders
76 No. 58, Act No. 194, section 2, and Act No. 1627, section 37, all of them relating to the preliminary investigation in question, are in force and effect in the City of Manila.

VI.

"The court erred in holding that the Libel Act, No. 277, in so far as it allows a person libeled the right to recover in a civil suit such damages as the court may consider a sufficient punishment of the defendant and an example to others, in addition to the penalty provided in criminal prosecutions under section 2 of the said Act, is not unconstitutional.

VII.

"The court erred in holding that the editorial 'Birds of Prey,' which is the basis of this prosecution, is libelous.

VIII.

"The court erred in taking into consideration the mere opinion of the witnesse- introduced by the prosecution with reference to the meaning and significance of the editorial.

IX.

"The court erred in giving more weight to the opinion of the witnesses for the prosecution than to the more competent testimony of the expert witnesses presented by the defense.

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77

X.

"The court erred in holding that Exhibits 'B' and 'C' of the prosecution indicate that the editorial in question referred to Dean C. Worcester.

XI.

"The court erred in failing to take into consideration the oral and documentary evidence introduced by the defendants in justification of their exemption from criminal liability.

XII.

"The court erred in holding that the editorial in question refers only and necessarily to Dean C. Worcester.

XIII.

"The court erred in holding that the defendants have failed to show their good faith and justifiable motives in the publication of the said editorial.

XIV.

"The Court erred in finding that the crime charged had been committed.

XV.

"The court erred in holding that the defendant Martin Ocampo is one of the proprietors of 'El Renacimiento.'

78

XVI.

"The court erred in holding that the defendant Martin Ocampo published and caused to be published the editorial which is the subject of this prosecution in the newspaper 'El Renacimiento,' facilitating its circulation in the Philippine Islands.

XVII.

"The court erred in convicting the accused.

XVIII.

"The court finally erred in imposing in its decision upon the defendant Teodoro M. Kalaw a greater penalty than the one imposed by the court below in the judgment appealed from, libel being the crime charged.

"Several of the errors assigned are in violation of the Constitution of the United States and of the Act of Congress of July 1st, 1902, known as the Philippine Bill of Rights.

"The decision in question is contrary to law and to the weight of the evidence in this case.

"Manila, December 29th, 1910.

(Signed) "FELIPE AGONCILLO,

"Counsel for Defendants and Appellants."

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79 Thereafter and on the 3rd day of January, 1911, the Supreme Court denied the foregoing petition for a rehearing.

Thereafter on the 4th day of January, 1911, final judgment was entered in the Supreme Court of the Philippine Islands in the words and figures following, to-wit:

(Title of Court and Cause Omitted.)

"Judgment.

"This court having regularly acquired jurisdiction for the trial of the above entitled cause, which was submitted by both parties for decision, after consideration of the same by the court upon the record and proceedings, its decision and order for judgment having been entered on the 22nd day of December, 1910.

"Therefore, by virtue thereof, it is hereby decreed that the judgment of the Court of First Instance of the City of Manila, dated the 8th day of March, 1909, and from which the said appeal was taken, be, and the same is hereby, affirmed with reference to the defendant Martin Ocampo, who is hereby sentenced to six months of imprisonment and to pay a fine of P2,000.00, to pay one-fifth of the costs of first instance and one-third of the costs of this appeal, and in case of insolvency, to suffer subsidiary imprisonment in accordance with the provisions of Act No. 1732.

80 "That the judgment imposed by the court below on the defendant Teodoro M. Kalaw, considering the high reputation of the person libeled and the dignity of the office which he held at the time of the publication of the libel in question, and in view of the further fact that the defendant attempted to establish the truth of the alleged libelous editorial and failed to do so, thereby practically repeating and giving new publicity to the libel, and upon the recommendation of the Attorney-General, the judgment of the trial court is hereby modified and the said accused Teodoro M. Kalaw is hereby sentenced to imprisonment for twelve months, to pay a fine of P3,000.00, one-fifth of the costs of first instance and one-third of the costs of this appeal, and, in case of insolvency, to suffer subsidiary imprisonment in conformity with the provisions of Act No. 1732.

"That the sentence imposed by the trial court on the defendant Fidel A. Reyes, by reason of the insufficiency of the evidence submitted at the trial of this cause, be, and the same is hereby, reversed, and the complaint is hereby dismissed as to him, without costs.

(Signed) "J. E. BLANCO,
[COURT SEAL.] *Clerk Supreme Court, P. I.*"

Thereafter and on the 5th day of January, 1911, counsel
81 for defendants and appellants filed the following exception:

(Title of Court and Cause Omitted.)

"Exception.

"Martin Ocampo and Teodoro M. Kalaw, through their undersigned attorney, appear before this honorable court and allege:

"That having been notified on this day by mail of the order of this honorable court denying the petition for rehearing heretofore submitted by the defendants and appellants, they hereby except to the said order.

"Wherefore, they pray that this honorable court order that the said exception be noted upon the record of this cause as entered in due time and form.

"Manila, January 5th, 1911.

(Signed) "FELIPE AGONCILLO,
"Counsel for Defendants and Appellants."

Thereafter and on the 6th day of January, 1911, counsel for defendants and appellants filed the following exception:

(Title of Court and Cause Omitted.)

82 *"Exception.*

"Martin Ocampo and Teodoro M. Kalaw appear, through their undersigned attorney, and allege:

"That having been notified on the afternoon of yesterday, the fifth instant, that a final judgment had been entered in the above entitled cause against the defendants herein, they hereby except to the said judgment.

"Wherefore, they pray that this honorable court allow their said exception as entered in due time and form and hereby announce their intention to prosecute a writ of error from the Supreme Court of the United States to the Honorable Supreme Court of these Islands, and finally defendants pray that they be allowed ten days from this date, the sixth instant, within which to file their petition for the said writ of error, the same to operate as a supersedeas of the judgment entered as aforesaid.

"Manila, January 6th, 1911.

(Signed) "FELIPE AGONCILLO,
"Counsel for Defendants and Appellants."

Thereafter and on the 6th day of January, 1911, the Supreme Court made the following order:

"Upon consideration of the petitions presented by attorney Felipe Agoncillo, excepting to the order of this court overruling his
83 motion for a rehearing upon the decision of this court in Cause No. 5527, The United States vs. Martin Ocampo and Teodoro M. Kalaw, and excepting to the final judgment entered in said cause, and asking that defendants be allowed ten days from the sixth instant in order to prosecute a writ of error from the Su-

preme Court of the United States to the Supreme Court of these Islands, the same to operate as a supersedeas of the said judgment, ordered: That the said exceptions be noted as having been filed in due time and form, and, as to the last prayer, the same is hereby granted."

Thereafter and on the 14th day of January, 1911, counsel for defendants and appellants filed the following motion:

(Title of Court and Cause Omitted.)

"Martin Ocampo and Teodoro M. Kalaw, defendants and appellants in the above entitled cause, now appear, through their undersigned attorney, and to this honorable court respectfully represent:

"That in the aforesaid cause final judgment has been entered affirming the decision of the trial court with reference to the defendant Martin Ocampo, who has been sentenced to six months of imprisonment and to pay a fine of P2,000.00, Philippine cur-
84 rency, to pay one-fifth of the costs of first instance and one-third of the costs of this appeal, the defendant to suffer, in case of insolvency, the corresponding subsidiary imprisonment, in conformity with the provisions of Act No. 1732.

"And the judgment appealed from is modified with reference to the defendant Teodoro M. Kalaw, who has been sentenced to imprisonment for twelve months and to pay a fine of P3,000.00, Philippine currency, to pay one-fifth of the costs of first instance and one-third of the costs of this appeal, and to suffer, in case of insolvency, the corresponding subsidiary imprisonment, in accordance with the provisions of Act No. 1732.

"The aforesaid final judgment is, in the humble opinion of counsel for defendants and appellants, contrary to the Constitution of the United States and the Philippine Bill of Rights, as appears from the assignment of errors.

"Wherefore, defendants respectfully pray this honorable court to allow them a writ of error from the Supreme Court of the United States, the same to operate as a supersedeas of the judgment and that, upon the giving of a bond in such sum as the court may deem sufficient, with the conditions prescribed by law, they be allowed their liberty during the pendency of the said writ of error, in order that the said judgment may be reviewed by the
85 Honorable Supreme Court of the United States upon the said assignment of errors.

"They further pray that the pleadings, proceedings and exhibits which form a part of this cause, and which are in the Spanish language, be translated into the English language, and that a copy of the record, proceedings and exhibits, duly authenticated, be forwarded to the Supreme Court of the United States for the purposes of the said writ or error.

"Manila, January 14th, 1911.

(Signed) "FELIPE AGONCILLO,
"*Counsel for Defendants and Appellants.*"

(Title of Court and Cause Omitted.)

"Assignment of Errors.

"Martin Ocampo and Teodoro M. Kalaw, plaintiffs in error, appear, through their undersigned attorney, and respectfully represent that in the record and proceedings in the above entitled cause manifest errors have been committed, as follows:

I.

"That this court erred in failing to hold that the accused and plaintiffs in error have been deprived of their liberty in this
86 case without due process of law or probable cause, supported by oath or affirmation, in violation of the Constitution of the United States and of Section 5 of the Act of Congress of July 1st, 1902, known as the Philippines Bill.

II.

"That this court erred in failing to sustain the motion of plaintiffs in error asking that the trial court annul the warrants of arrest issued against each of the accused and plaintiffs in error, to set them at liberty, to cancel the bond by them given, and to abstain from all further proceedings in this cause until a preliminary investigation be held as required by General Orders No. 58, which would confer jurisdiction upon the said trial court to take cognizance of the complaint filed, to summon the accused and plaintiffs in error to appear for trial, and to render a valid judgment, in violation of the Constitution of the United States and of Section 5 of the Philippines Bill.

III.

"That the court erred in failing to sustain the motion of plaintiffs in error asking the trial court (without waiving the allegations and prayer of their former motion) to require the acting Prosecuting Attorney of the City of Manila to produce before the said inferior tribunal and plaintiffs in error the proceedings of the pre-
87 liminary investigation alleged to have been conducted of held by the said official, and that, until the accused and plaintiffs in error are fully advised of the contents of the said preliminary investigation, they be not compelled to present a demurrer or an answer to the complaint filed against them, in violation of the Constitution of the United States and of Section 5 of the Philippines Bill.

IV.

"That this court erred in failing to sustain the motion of plaintiffs in error asking the court below to hold a preliminary investigation of the facts alleged in the complaint, as required by General Orders No. 58 and other Acts of the Philippine Commission, in violation of the Constitution of the United States and of Section 5 of the Philippines Bill.

V.

"That the court erred in failing to sustain the demurrer of each and all of the accused and plaintiffs in error to the original complaint filed in this cause, one of the grounds of the said demurrer being that the trial court had no jurisdiction to try the accused for the said crime, which is the subject of these proceedings, for the reason that the said complaint was null and void, this in violation of the Constitution of the United States and of Section 5 of the Philippines Bill.

88

VI.

"That the court erred in failing to hold that Act No. 612, section 2, which has been applied to the proceedings instituted against the accused and plaintiffs in error, is unconstitutional, since the said Act violates some of the fundamental provisions of the Constitution of the United States and of Section 5 of the Philippines Bill.

VII.

"That the court erred in failing to find that the said Act No. 612, section 2, amending section 39 of Act No. 183, had been repealed, at the time this prosecution was instituted, by the provisions of section 37 of Act No. 1627, which confers jurisdiction upon the justice of the peace of the City of Manila to hold preliminary investigations of all crimes committed within the jurisdiction of the said city, without prejudice to the right of the Court of First Instance of the said city to exercise the same jurisdiction.

VIII.

"That the court erred in failing to find that General Orders No. 58 and Acts No. 194, section 2, and No. 1627, section 37, which provide for a preliminary investigation, were in full force in the City of Manila at the time this case was instituted.

89

IX.

"That the court erred in holding that the editorial 'Birds of Prey' was libelous per se.

X.

"That the court erred in taking into consideration as competent evidence the opinion of the witnesses for the prosecution as to whether or not the editorial in question referred to Dean C. Worcester.

XI.

"That the court erred in giving greater weight to the opinion of the witnesses for the prosecution than to the more competent expert testimony of the witnesses for the defence with reference to the meaning and natural and literary interpretation of the said editorial and all parts thereof.

XII.

"That the court erred in holding that the exhibits of the prosecution show that the editorial in question referred to Dean C. Worcester.

XIII.

"That the court erred in holding that the said editorial in question only and necessarily refers to Dean C. Worcester.

XIV.

"That the court erred in holding that good intention and
90 justifiable motives in the publication of the aforesaid editorial had not been shown.

XV.

"That the court erred in failing to take into consideration the oral and documentary evidence introduced by plaintiffs in error to justify and establish their exemption from criminal responsibility.

XVI.

"That the court erred in holding that the accused and plaintiff in error Martin Ocampo was one of the proprietors of 'El Renacimiento' at the time of the publication of the editorial in question.

XVII.

"That the court erred in holding that the mere fact that the accused and plaintiff in error Martin Ocampo was the proprietor of 'El Renacimiento' was sufficient to hold him criminally responsible for the publication of the said editorial claimed to be libelous per se.

XVIII.

"That the court erred in holding that the said accused and plaintiff in error Martin Ocampo published and caused to be published the editorial in question in the newspaper 'El Renacimiento', facilitating its circulation throughout the Philippine Islands.

91 XIX.

"That the court erred in convicting the accused and plaintiffs in error of the crime charged.

XX.

"That the court erred in imposing upon the accused and plaintiff in error Teodoro M. Kalaw a more severe penalty than the one imposed by the trial court in its decision.

XXI.

"That the court finally erred in overruling the motion of the accused and plaintiffs in error for a new trial in the above entitled cause.

"Wherefore, Martin Ocampo and Teodoro M. Kalaw hereby pray the Honorable Supreme Court of the United States of America that the decision and judgment of the Honorable Supreme Court of the Philippine Islands be reversed, and that the said cause be returned to this court, with instructions to dismiss the original complaint filed herein against the accused and plaintiffs in error.

"Manila, January 14th, 1911.

(Signed) "FELIPE AGONCILLO,
"Counsel for Accused and Plaintiffs in Error."

92 Thereafter and on the 25th day of January, 1911, the Supreme Court made the following order:

"Upon the analogy of the decisions of the Supreme Court of the United States, holding that presentment by a grand jury and trial by jury are not necessary elements in the prosecution of criminal causes in these Islands; and upon the authority of the decision in the case of Hurtado vs. California, 110 U. S., 516; and further upon the authority of the decisions in the cases of Lamposas vs. Bell, 180 U. S. 276, and City of Memphis vs. Cumberland Telephone and Telegraph Co., handed down by the Supreme Court of the United States on December 12, 1910, in which it was held that a case brought to that tribunal by writ of error would be dismissed for lack of jurisdiction unless the claim that the law of the State is in contradiction with the Constitution of the United States is 'a real and substantial one' and that 'a mere claim in words is not sufficient,' the petition for a writ of error presented by counsel for Martin Ocampo and Teodoro M. Kalaw, defendants in criminal cause for libel No. 5527, instituted against said accused in the Court of First Instance of this city and decided on appeal by this court on the 22nd of December, 1910, is hereby denied."

Thereafter and on the 27th day of January, 1911, counsel
93 for plaintiffs in error filed the following exception:

(Title of Court and Cause Omitted.)

"Exception.

"Martin Ocampo and Teodoro M. Kalaw, the accused and plaintiffs in error in the above entitled cause, appear, through their undersigned attorney, and to the court respectfully state:

"That having been notified on this day by mail of the decision of this Honorable Court, denying their petition for a writ of error from the Supreme Court of the United States to this Court to review the decision rendered on appeal in the said cause, they hereby except to the said order and decision.

"Wherefore, they respectfully ask this Honorable Supreme Court that this exception be duly noted upon the record of the said cause.

"Manila, January 27th, 1911.

(Signed) "FELIPE AGONCILLO,
"Counsel for Accused and Plaintiffs in Error."

Thereafter and on the 27th day of January, 1911, counsel for accused and plaintiffs in error filed the following motion:

(Title of Court and Cause Omitted.)

94 *"Motion.*

"Martin Ocampo and Teodoro M. Kalaw, the accused and plaintiffs in error in the above entitled cause, appear, and respectfully state:

"That this Honorable Court having heretofore denied their petition for a writ of error in the above entitled cause, and it being, therefore, necessary for the accused to present the same petition to the Honorable Supreme Court of the United States, they respectfully ask this Court that they be allowed, as a matter of equity, at least a reasonable time to enable them to present their petition for a writ of error as aforesaid to the Honorable Supreme Court of the United States, and that, in the meantime, the execution of the judgment of this court be suspended and defendants be permitted to remain at liberty under bond, in such sum as this court may deem sufficient, during the pendency of the proceedings in the Supreme Court of the United States.

"Manila, January 27th, 1911.

(Signed) "FELIPE AGONCILLO,
"Counsel for Accused and Plaintiffs in Error."

Thereafter and on the 28th day of January, 1911, the Supreme Court of the Philippine Islands made the following order.

95 "Upon consideration of the petition presented by the attorney for the defendants Martin Ocampo and Teodoro M. Kalaw in case No. 5527, excepting to the order of this court, dated the 25th instant, and asking that, as a matter of equity, they be allowed a reasonable time within which to present a petition for a writ of error to the Supreme Court of the United States, and that, in consequence thereof, the execution of the judgment of the court be suspended, and that they be permitted to remain at liberty, under bond, in such sum as this court may deem sufficient, during the pendency of the proceedings in the court above, ordered. That the execution of the judgment of this court be, and the same is hereby, suspended for a period of one hundred and twenty (120) days upon the giving of a bond by each of the defendants in the sum of Ten Thousand Pesos, Philippine currency."

Thereafter and on the 30th day of January, 1911, each of the defendants, Martin Ocampo and Teodoro M. Kalaw, filed a bond

in the sum of Ten Thousand Pesos, Philippine currency, as required by the order of the Supreme Court, which bonds were duly approved by the Hon. A. C. Carson, Associate Justice of the said Supreme Court of the Philippine Islands.

96 In the Supreme Court of the Philippine Islands

No. 5527.

MARTIN OCAMPO & TEODORO M. KALAW, Plaintiffs in Error,
vs.
THE UNITED STATES, Defendant in Error.

Petition for Writ of Error.

Come now Martin Ocampo and Teodoro M. Kalaw plaintiffs in error herein and say:

That on Dec. 22, 1910 the Supreme Court of the Philippine Islands entered judgment and sentence against the plaintiffs in error in which judgment or sentence certain errors were committed to the prejudice of the plaintiffs, all of which will more in detail appear from the Assignment of Errors which is filed with this petition.

That on Nov. 5, 1908 the acting Prosecuting Attorney of the City of Manila, Philippine Islands filed an information or complaint with the judge of the criminal branch of the Court of First Instance of Manila charging the plaintiffs in error, Martin Ocampo and Teodoro M. Kalaw, with the crime of libel alleged to have been committed in violation of Act 277 of the Philippines Commission. The information or complaint was subscribed

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Subscribed and sworn to before me this 5th day of November, 1908 in the City of Manila, Philippine Islands by L. M. Southworth, acting prosecuting attorney of the City of Manila.

CHAS. H. SMITH,
Judge, Court of First Instance.

97 A preliminary investigation has been conducted under my direction, having examined the witnesses under oath in accordance with the provisions of section 39 of Act 183 (Manila Charter) as amended by section 2 of Act 612 of the Philippine Commission.

L. M. SOUTHWORTH,
Acting Prosecuting Attorney.

Subscribed and sworn to before me this 5th day of November, 1908 in the City of Manila, Philippine Islands by L. M. Southworth, acting prosecuting attorney for the City of Manila.

CHAS. H. SMITH,
Judge, Court of First Instance.

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That on the same day warrants of arrest were issued for each of said plaintiffs in error who were duly arrested, and appeared before the court and requested a copy of the information and that they be given until the 7th day of Nov. 1908 at 8 o'clock A. M. to answer.

That on the 7th day of November, 1908 the plaintiffs in error by their attorney presented a motion to quash the information and warrant issued on the ground that the preliminary investigation prescribed by the laws of the Philippine Islands had not been practiced in this case and that no specific finding had been made by the court of First Instance as to the existence of probable cause that the crime of libel had been committed, and that the warrants issued by the court without such preliminary examination held and in the absence of a finding by the court of probable cause was in violation of the laws of the Philippine Islands and the Act of Congress of July 1, 1902 known as the Philippine Bill.

That on the 10th day of November, 1908 the judge of the court of First Instance after denying a motion presented by the plaintiffs in error for further time in which to present arguments in support of the said motion to quash formally denied said motion and ordered that the plaintiffs in error each and all plead to the information forthwith, to which order denying said motion the plaintiffs in error duly excepted, and to any further action on the part of the court or any further proceedings which might be had in said cause.

98 That thereupon and on the 10th day of Nov. 1908 the plaintiffs in error, without waiving any of the objections by them raised in the motion of the 7th of November, 1908 and reiterating the exception taken by them to the order of the court denying the same presented a motion that there be submitted to the court and to them for examination the proceedings of the preliminary investigation alleged to have been conducted by the acting prosecuting attorney, and that until the plaintiffs in error should have fully examined the said proceedings they should not be compelled to demur or answer to the information. This motion was then and there denied by the court and the plaintiffs in error were ordered to plead, to which denial of said motion the defendants then and there duly excepted.

That on the 12th day of November 1908 the plaintiffs in error presented a motion requesting the Court of First Instance of the City of Manila to hold a preliminary examination in the case before it before compelling the plaintiffs in error either to demur or answer to the information. This motion was then and there denied by said court to which order of denial the plaintiffs duly excepted.

That thereafter and on the 12th day of Nov. 1908 each of the plaintiffs in error filed a motion in the said court of First Instance for a separate trial, in response to which motion the court then and there ordered that the determination of the same be suspended until the completion of the arraignment in this cause.

That thereupon and on the 12th day of Nov. 1908 the plaintiffs in error by their counsel presented separate demurrers to the information each of which was in the same form and supported by the

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same arguments, the grounds of each demurrer being (1) that the court had no jurisdiction to take cognizance of the crime charged in the information and, (2) that the facts set out in the information did not constitute the crime of libel. As more specific grounds for the demurrer it was alleged that Act No. 612 of the Philip-
99 pine Commission was unconstitutional in that it deprived the plaintiffs in error of the right to a preliminary investigation and finding of probable cause which all persons charged with crimes triable before the courts of First Instance outside of the City of Manila could demand thereby denied the plaintiffs in error the equal protection of the laws and was thus in conflict with the constitution of the United States and the Philippines Bill.

That thereupon and on the 12th day of Nov. 1908 the court of First Instance ordered that the demurrer be overruled and that the plaintiffs in error plead to the said information forthwith, to which ruling of the court the plaintiffs in error duly excepted.

That thereupon and on the 12th day of November 1908 the plaintiffs were duly arraigned, the information was read to each of them and a copy of the same was delivered to each one. They were each requested to plead whether or not they were guilty of the crime charged in said information but each plaintiff in error refused then and there to plead and the plea of "not guilty" was entered in the case of each.

That thereupon and on the 12th day of November 1908 the judge of the Court of First Instance ordered the plaintiffs in error to appear before him on the 14th of Nov. 1908 for the purpose of fixing the date and trial for each.

That thereupon and on the 16th day of November 1908 the plaintiff in error, Martin Ocampo appeared and requested the appointment of assessors to assist the judge in the trial of the case and on the 2d. day of Dec. 1908 the plaintiff in error, Teodoro M. Kalaw appeared before the court with the same request and the assessors were duly appointed, summoned and sworn in accordance with the provisions of law.

That on the 18th day of November 1908 the plaintiff in error, Martin Ocampo was brought to trial and on the 9th day of Jan. 1909 the judge of the Court of First Instance found him guilty as charged in the information and sentenced him to 6 months'
100 imprisonment and to pay a fine of 2,000 pesos and 1/5 of the costs of this action, the sentence to be executed at Bilibid prison which is the State's prison or penitentiary of the Philippine Islands and in case of insolvency and non-payment of the fine to suffer subsidiary imprisonment at the rate of 2½ pesos per day.

That on the 5th day of December 1908 the plaintiff in error, Teodoro M. Kalaw was brought to trial and on the 8th day of March 1909 this plaintiff in error was found guilty by the Court of First Instance as charged in the information and sentenced to 9 months' imprisonment in Bilibid prison and to pay a fine of 3,000 pesos and 1/5 of the costs of the action and in case of insolvency and non-payment of the fine imposed to suffer subsidiary imprisonment at the rate of 2½ pesos per day.

That thereupon the plaintiffs in error duly appealed from the sentence of the lower court and assigned as errors that that court erred in issuing the warrant of arrest and proceeding with the trial of the plaintiffs in error without any preliminary investigation or finding of probable cause, that the court erred in holding that Act No. 612 was not unconstitutional, for the reasons assigned in the demurrer, and that the court further erred in assuming jurisdiction of the information filed in the cause and in holding that the facts alleged in the information constituted the crime of libel; together with other assignments of error unnecessary for specification in this petition.

That on the 22d. day of Sept. 1910 the Supreme Court of the Philippine Islands entered judgment against the plaintiffs in error wherein said court found said plaintiffs in error guilty of the crime of libel and sentenced the said plaintiff in error Martin Ocampo to imprisonment for a period of 6 months and to
101 pay a fine of 2,000 pesos and 1/5 part of the costs of the action brought against him in the Court of First Instance of Manila, and 1/3 part of the costs thereof in the Supreme Court of the Philippine Islands, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of Act No. 1732 of the Philippines Commission, and the said plaintiff in error Teodoro M. Kalaw to imprisonment for a period of 12 months and to *apy* a fine of 3,000 pesos and 1/5 part of the costs in the Court of First Instance of the City of Manila and 1/3 part of the costs in the Supreme Court of the Philippine Islands; and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of Act No. 1732 of the Philippine Commission.

That thereupon and on the 24 day of Dec. 1910 the plaintiffs in error presented a petition to the Supreme Court excepting to the judgment above rendered and asking that the exception be duly noted and that plaintiffs in error be reserved the right to file a motion or petition for a reconsideration of the sentence within the time provided by law.

That thereupon and on the 27th day of Dec. 1910 the Supreme Court ordered that the foregoing exception be noted and the motion attached to the record; and thereafter and on the 29th day of Dec. 1910 the plaintiffs in error by their counsel presented a motion for a reconsideration of the judgment above rendered based upon 18 alleged assignments of error as appears by the record hereto annexed.

That thereupon and on the 3d. day of Jan. 1911 the Supreme Court denied the foregoing petition for a rehearing and thereafter and on the 4th day of Jan. 1911 reaffirmed its sentence and judgment against the plaintiffs in error.

That thereupon and on the 5th day of Jan. 1911 the plaintiffs in error noted their exception in due time and form to the final judgment of the Supreme Court aforesaid.

That thereupon and on the 6th day of Jan. 1911 the plain-
102 tiffs in error Martin Ocampo and Teodoro M. Kalaw excepted to said final judgment of the Supreme Court of the Philippine Islands and announced their intention to prosecute a

writ of error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands, and prayed that they be allowed time within which to file their petition for the said writ of error.

That thereupon and on the 6th day of Jan. 1911 the Supreme Court of the Philippine Islands ordered that said exception be noted as having been filed in due time and form and granted the prayer as to the filing of the petition for said writ of error.

That thereupon and on the 14th day of Jan. 1911 the plaintiffs in error filed their petition for a writ of error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands the assignment of errors being set out in the record of the case hereto annexed.

That thereupon and on the 25th day of Jan. 1911 the petition for the writ of error presented by the plaintiffs in error was denied by the Supreme Court of the Philippine Islands.

That thereupon and on the 27th day of Jan. the plaintiffs in error filed their exception to the said order denying their petition for a writ of error and presented a motion in which they asked the Supreme Court of the Philippine Islands that they be allowed a reasonable time to enable them to present their petition for a writ of error as aforesaid to the Supreme Court of the United States.

That thereupon and on the 29th day of Jan. 1911 the Supreme Court of the United States upon consideration of said petition ordered that the plaintiffs be allowed a reasonable time within which to present their petition for the writ of error aforesaid and that the execution of the judgment of the Supreme Court of the Philippine Islands be suspended during the pendency of the proceedings before the Supreme Court of the United States, and that the plaintiffs in error be permitted to remain at liberty under bond for a period of 120 days upon the giving of a bond by each of the plaintiffs in error in the sum of 10,000 pesos, Philippine currency which is the equivalent of $5,000 in money of the United States.

103 That thereupon and on the 30th day of Jan. 1911 each of the plaintiffs in error Martin Ocampo and Teodoro M. Kalaw filed a bond in the sum of 10,000 pesos Philippine currency which bonds were duly approved by the Hon. A. C. Carson, associate justice of the Supreme Court of the Philippine Islands all of which appears by the record annexed to this petition.

That thereupon and on a date unknown to the undersigned the plaintiffs in error presented a motion to the Supreme Court of the Philippine Islands asking that the period of 120 days aforesaid in which they might present their petition for the writ of error to the Supreme Court of the United States be extended.

That the motion aforesaid was granted by the Supreme Court of the Philippine Islands and the time in which said petition might be presented by the plaintiffs in error to the Supreme Court of the United States was extended to the 30th day of Sept. 1911 which motion and order of extension granting the same do not appear of record but of which the undersigned have been informed both by cable and by letter from the Philippine Islands.

Wherefore these plaintiffs in error pray that a writ of error may be issued in this behalf by the Supreme Court of the United States or by an associate justice of the said court for the correction of the errors so complained of, which are set out in the Assignment of Errors filed with this petition, and that a transcript of the record and of all proceedings and papers in this cause duly authenticated may be sent to the Supreme Court of the United States.

(Sgd.) SHUSTER AND BOUVÉ,
(Sgd.) RALSTON, SIDDONS & RICHARDSON,
Counsel for Accused and Plaintiffs in Error.

104 In the Supreme Court of the Philippine Islands.

No. 5527.

MARTIN OCAMPO & TEODORO M. KALAW, Plaintiffs in Error,
vs.
THE UNITED STATES, Defendant in Error.

Assignment of Errors.

The plaintiffs in error in this case in connection with their petition for writ of error make the following Assignment of Errors which they aver occurred in the decision and sentence of the Supreme Court of the Philippine Islands aforesaid:

(1) That the court erred in holding that the plaintiffs in error were not entitled as of right by the 4th Amendment of the Constitution of the U. S. and Section 5 of the Philippines Bill which provide that no warrant shall issue except on probable cause to a preliminary examination by an examining magistrate and to a finding of probable cause by said magistrate that the crime had been committed.

(2) That the court erred in holding that to arrest and imprison the plaintiffs in error for the crime charged to have been committed in the City of Manila on an information subscribed by the prosecuting attorney of the City of Manila and unsupported by any affidavit except one which states that a preliminary investigation has been held by the prosecuting attorney constitutes due process of law.

(3) That the court erred in holding that an investigation of which the plaintiffs in error were not notified nor to which they or any witnesses on their behalf were summoned to appear, held in secret by the prosecuting attorney of the City of Manila, who, after summoning and taking the testimony of Government wit-
105 nesses only, draws up the information and submits it to a judge of the Court of First Instance of the City of Manila without any affidavit as to the truth of the facts therein constitutes the preliminary examination required by the laws in force in the Philippine Islands.

(4) That this court erred in holding that the constitution of the United States and the Act of Congress of July 1, 1902, known as

the Philippine Bill authorized a judge of the Court of First Instance of the City of Manila to reach the conclusion that probable cause that an offence has been committed exists from the statement of the prosecuting attorney of that city, which concludes with an affidavit of said prosecuting attorney merely stating that a preliminary investigation has been conducted under his direction and that he has examined witnesses under oath.

(5) That the court erred in holding that the question whether probable cause that a crime has been committed exists or not must depend on the judgment and discretion of the judge or magistrate issuing the warrant in the absence of an examination by him of witnesses alleging under oath facts which if true would prove the existence of the crime charged and in the absence of any statement by the official prosecutor supported by affidavit other than an affidavit wherein it is alleged that the official has conducted an investigation in which statements were made to him by Government witnesses under oath.

(6) That the court erred in holding that Section 2 of the Act 612 of the Philippine Commission which provides that "in cases triable only in the Court of First Instance of the City of Manila the defendant * * * shall not be entitled as of right to a preliminary examination in any case where the prosecuting attorney after due investigation of the facts * * * shall have presented an information against him in proper form" and under which the plaintiffs in error were arrested, is not in conflict with the 4th Amendment of the Constitution of the United States or the 5th Section of the
106 Act of Congress of July 1, 1902, known as the Philippine Bill which provide that no warrants shall issue but upon probable cause supported by oath or affirmation.

(7) That the court erred in holding that said provision of said Act 612 of the Philippine Commission is not in conflict with the 14th Amendment of the Constitution of the United States and the 5th Section of the Act of Congress of July 1, 1902, known as the Philippine Bill which provides that no person shall be deprived of his liberty without due process of law.

(8) That the court erred in holding that said provision of said Act 612 of the Philippine Commission, although applicable to criminal cases triable only in the Court of First Instance of the City of Manila, and although beyond the limits of the City and district of Manila in cases triable before judges of the courts of First Instance the accused can only be arrested after probable cause has been found to exist by an examining magistrate after a preliminary examination at which the accused and his witnesses have the right to be heard and the accused the right to be confronted with and to cross-examine the witnesses against him is not in conflict with the 14th amendment of the Constitution of the United States and with Section 5 of the Act of Congress of July 1, 1902, known as the Philippine Bill, which provide that no person shall be denied the equal protection of the laws.

(9) That the court erred in increasing the penalty of the plaintiff in error, Teodoro M. Kalaw from imprisonment of 9 months as

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imposed by the lower court to imprisonment to 12 months "in view of the further fact that the defendant attempted to establish the truth of the alleged libelous editorial, and failed to do so, thereby practically repeating and giving new publicity to the libel," and "republishing the libel" in that the effect of the sentence is to impose on the plaintiff in error Teodoro M. Kalaw a penalty for the commission of two offenses, whereas the information charges but one, and further to impose a penalty upon the plaintiff in error
107 for the publication of a libel with which he is not charged by information or otherwise.

(10) That the court erred in imposing an increased penalty on the plaintiff in error Teodoro M. Kalaw because he failed to establish facts constituting under the law a valid defense without any finding that his plea of justification was not made in good faith.

(11) That the court erred in failing to sustain the motion of plaintiffs in error asking that the trial court annul the warrants of arrest issued against each of the accused and plaintiffs in error, to set them at liberty, to cancel the bond by them given, and to abstain from all further proceedings in this cause until a preliminary investigation be held in violation of the Constitution of the United States and of Section 5 of the Philippines Bill.

(12) That the court erred in failing to sustain the demurrer of the accused and plaintiffs in error to the original information filed in this cause in violation of the Constitution of the United States and Section 5 of the Philippines Bill.

(13) That the court erred in failing to find that Act No. 612, Section 2 amending Section 39 of Act No. 183 had been repealed at the time this prosecution was instituted by the provisions of Section 37 of Act 1627 of the Philippine Commission.

(14) That the court erred in failing to find that General Orders No. 58 and Acts No. 194, Section 2 and No. 1627, Section 37 of the Philippines Commission which provide for a preliminary investigation were in full force in the City of Manila at the time this case was instituted.

(15) That the court erred in taking in consideration as competent evidence the opinion of witnesses for the prosecution as to whether or not the editorial in question referred to Dean C. Worcester.

(16) That the court erred in holding that good intention and justifiable motives in the publication of the aforesaid edito-
108 rial had not been shown.

(17) That the court erred in holding that the relation of the plaintiff in error Martin Ocampo to the newspaper "El Renacimiento" as shown by the evidence adduced was such as to constitute him in law a proprietor thereof.

(18) That the Court erred in holding that the acts done by the plaintiff in error Martin Ocampo as shown by the evidence constituted publication of the libel charged.

(19) That the court erred in convicting the accused and the plaintiffs in error of the crime charged.

Wherefore, Martin Ocampo and Teodoro M. Kalaw hereby pray

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the Honorable Supreme Court of the United States of America that the decision and judgment of the Honorable Supreme Court of the Philippine Islands be reversed, and that the said cause be returned to this court, with instructions to dismiss the original complaint filed herein against the accused and plaintiffs in error.

Washington, D. C., Sept. 7, 1911.

(S'g'd) SHUSTER & BOUVÉ,
(S'g'd) JACKSON H. RALSTON,
For Ralston, Siddons & Richardson,
Counsel for Accused and Plaintiffs in Error.

109 UNITED STATES OF AMERICA, *ss:*

Clerk's Office, Supreme Court, Philippine Islands. Filed Dec. 5, 1911, 10 A. M.

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Martin Ocampo, Teodoro M. Kalaw, and Fidel A. Reyes, appellants, and The United States, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Consti-
110 tution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Martin Ocampo and Teodoro M. Kalaw, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 120 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

COPY BOUND CL

Witness the Honorable Edward D. White, Chief Justice of the United States, the 18th day of October, in the year of our Lord one thousand nine hundred and eleven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH R. LAMAR,
Associate Justice of the Supreme Court of the United States.

111 UNITED STATES OF AMERICA, *ss:*

Clerk's Office, Supreme Court, Philippine Islands. Filed Dec. 5, 1911, 10 A. M.

To The United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 120 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the Philippine Islands wherein Martin Ocampo and Teodoro M. Kalaw are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph R. Lamar, Associate Justice of the Supreme Court of the United States, this 18th day of October, in the year of our Lord one thousand nine hundred and eleven.

JOSEPH R. LAMAR,
Associate Justice of the Supreme Court of the United States.

Received a copy of the above citation.
Manila, Dec. 5th, 1911.
IGNACIO VILLAMOR,
Attorney-General.

112 On this Fifth day of December, in the year of our Lord one thousand nine hundred and eleven, personally appeared before me, the subscriber, Felipe Agoncillo, an Attorney-at-Law of this City, who represents the plaintiffs in Error and makes oath that he delivered a true copy of the within citation to the Attorney-General of the Philippine Islands for the Defendant in Error.

FELIPE AGONCILLO.

Cedula No. F-5074—Manila, Jan. 14, 1911.

Sworn to and subscribed the 5th day of December, A. D. 1911.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk Supreme Court, P. I.

CLOSE IN CENTER

113 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

PHILIPPINE ISLANDS,
City of Manila, ss:

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the attached record consisting (1) of a certified copy of the proceedings had upon the separate trial of Teodoro M. Kalaw in the Court of First Instance of the City of Manila in the case of United States vs. Martin Ocampo et al., defendants, Martin Ocampo, Teodoro M. Kalaw and Fidel A. Reyes, appellants, Supreme Court File No. 5527, for libel, the said transcript containing 484 typewritten pages; (2) a certified copy of the proceedings had upon the separate trial of Martin Ocampo in the same case, which said copy consists of 269 typewritten pages; and (3) a copy of the proceedings had in the Supreme Court of the Philippine Islands in the said cause of the United States vs. Martin Ocampo, Teodoro M. Kalaw and Fidel A. Reyes, which contains 111 typewritten pages, including the petition for a writ of error presented by Messrs. Shuster and Bouvé of Washington, D. C., the assignment of errors, the original writ of error and allowance thereof by Mr. Justice Lamar of the Supreme Court of the United States, and original citation and proof of service thereof, contains
a true and correct transcript and translation of the record
114 and proceedings in the above entitled cause.

And in obedience to the writ of error heretofore allowed, I hereby certify the said record to the Supreme Court of the United States of America.

In witness whereof I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands this 29th day of April, 1912.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 23,243. Philippine Islands Supreme Court. Term No. 669. Martin Ocampo and Teodoro M. Kalaw, plaintiff in error, vs. The United States. Filed June 6, 1912. File No. 23,243.

MAR 9 1914
JAMES D. MAHER

No. 270.

SUPREME COURT OF THE UNITED STATES.

October Term, 1913.

MARTIN OCAMPO AND TEODORO M. KALAW,
Plaintiffs in Error,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PLAINTIFFS IN ERROR.

CLEMENT L. BOUVÉ,
WILLIAM R. HARR,
Attorneys for Plaintiffs in Error.

Subject Index

	Page
Statement	1–3
Specifications of error	4
Argument	5–48
I. The arrest and trial of plaintiffs in error was without probable cause	5–19
(*a*) No finding of probable cause	9–10
(*b*) Proof of probable cause of guilt should be submitted to committing magistrate	10–17
(*c*) Objections to illegality of issuance of warrants seasonably made	17–19
II. Act 612 of Philippine Commission deprived plaintiffs in error of the equal protection of the laws guaranteed by the Constitution of the United States and the Philippine Bill of Rights	19–23
III. The conviction of Ocampo was erroneous as he was not proprietor or publisher of the Renacimiento	23–40
(*a*) He was not the proprietor	24–32
(*b*) He was not liable as "administrador" of the paper	32–40
Establishment and operation of Spanish papers in the Islands	34
Participation of Ocampo in operation of Renacimiento	35–39
Decisions cited in judgment of Supreme Court of the Philippines not in point	39–40
IV. Supreme Court of Philippine Islands had no right to increase the penalty of Kalaw	40–48
Distinction between this case and the Trono and Flemister cases	42–44
Reasons for the increase of penalty insufficient in law	44–45
(*a*) The high reputation of the person libelled	45
(*b*) Mr. Worcester's official position	45–46
(*c*) Kalaw's failure to establish the truth of the libel	46–47
(*d*) The Recommendation of the Philippine Attorney General	47–48

CASES, STATUTES AND AUTHORITIES CITED.

A

	Page
Act of Congress of July 1, 1902 (Philippine Bill of Rights)	5
Acts of the Philippine Commission	
183	6, 7
194	6
277	23, 32, 46
612	7, 19

B

Page

Broughton *v.* McGrew, 39 Fed. 672 45

C

Code of Criminal Procedure of the Philippines (General Order No. 58) .....
Commonwealth *v.* Morgan, 107 Mass. 197 5
Cyclopedia of Law and Procedure, Vol. 8, 683 39
30

F

Flemister *v.* United States, 207 U. S. 372 41
Folwell *v.* Miller, 145 Fed. 495 ..... 30, 32

G

Gandia *v.* Pettingill, 222 U. S. 452 46

J

Jilz, *re* 3 Moo. App. Rep. 243 22

K

Kepner *v.* United States, 195 U. S. 100 .....
Kerr *v.* United States, 119 U. S. 436 43
18

L

Lowrie, *re*, 8 Colo. 499 19

M

Mccabe *v.* Jones, (N. Y. Com. Pleas Rep., 10 Daly, 222) 33

P

Parsons on Partnership, 4th ed. sec. 61 .....
People *v.* Clay, 86 Ill. 31
People *v.* Mangold, 71 Mich. 335 39
People *v.* Police Justice, 7 Mich. 456 23
23

R

Rex *v.* Gutch, et al., Moo. and Mall. Rep. 433 .....
Rule of Court, 3 Woods, 502, 12126 Fed. Cases 30
10

S

Spooner *v.* Daniels, Fed. Cases, 13244a .....
State *v.* Gleason, 32 Kansas, 245 33
State *v.* Mason, 26 Oregon, 273 14
Swart *v.* Kimball, 43 Mich. 443 39
16

T

Page

Trono *v.* United States, 199 U. S. 521 41

U

United States *v.* Ocampo, (decided by Court of First Instance of Manila in former suit brought against Ocampo and Kalaw for libel) 34
United States *v.* Ortiz, 8 Phil. Rep. 753 39
United States *v.* Turcaud, 20 Fed. 621 12
United States *v.* Wilson, 4 Phil. Rep. 317 8
United States *v.* Uhl, 203 Fed. 157 46

W

Weeks' Case (decided by this Court Feb. 24, 1914) 18
Weil *v.* Nevin, 1 Monaghan, Penn. 65 33

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

MARTIN OCAMPO AND TEODORO M. KALAW, PLAINTIFFS IN ERROR, *vs.* THE UNITED STATES. } No. 270.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement of Case.

On November 5, 1908, the plaintiffs in error, together with three other persons (Lope K. Santos, Fidel A. Reyes and Faustino Aguilar) were arrested upon an information filed in the Court of First Instance of the City of Manila charging them, as editors, proprietors, owners, directors, writers, managers, administrators, printers and publishers of the newspaper "El Renacimiento," published in the city of Manila in both the Spanish and Tagalog languages, with publishing—wilfully, unlawfully, feloniously and with malicious intent to injure—a libel against Dean C. Worcester, then a member of the Philippine Commission, said libel consisting of an editorial in the October 30, 1908 issue of "El Renacimiento," entitled "Aves de Rapina" or "Birds of Prey." (R. 1–7, 148–154.)

This information was subscribed and sworn to by the acting prosecuting attorney, who also certified (R. 7, 154) that—

> "A preliminary investigation has been conducted under my direction, having examined the witnesses under oath, in accordance with the provisions of section 39 of Act 183 (Manila Charter), as amended by section 2 of Act 612 of the Philippine Commission."

On the same day the defendants named in the information were arrested and brought before the Court of First Instance, and the court allowed them until November 7th to plead thereto. (R. 8, 155.)

Thereafter (November 7, 1908), two days later, and before any plea was entered, the defendants filed a motion to quash the information on substantially the following grounds (R. 8-9, 155-6):

1. That they had been held to answer for a criminal offense without a preliminary investigation being first held by the court and without any tribunal, judge, magistrate or any other competent authority having first determined that the alleged crime of libel had been committed and that there was probable cause to believe that all and each of the defendants were guilty of the crime charged, in violation of sections 12 and 13 of General Order No. 58, issued by the Military Governor of the Islands on April 23, 1910, and paragraphs 1, 3, 11 and 18 of the Philippine Bill, enacted by Congress on July 1, 1902.

2. That section 2 of the Act No. 612 of the Philippine Commission, although it deprives accused persons in the City of Manila of the right to a preliminary investigation, did not relieve the court of the duty to make the preliminary investigation as provided in section 13 of the aforesaid General Order No. 58, the provisions of which, upon this subject, still continued in force in the City of Manila.

3. That section 2 of Act 612, which deprived accused persons in the City of Manila of the right to demand a preliminary investigation, was contrary to the provisions of section 5

of the Philippine Bill, because, among other things, it provided that accused persons might be deprived of their liberty without due process of law, and also deprived them of the equal protection of the laws.

This motion to vacate the order of arrest was overruled (R. 11, 159), to which ruling the defendants duly excepted. (R. 15–16, 162–163.)

The defendants then moved for an order requiring the prosecuting attorney to submit to the court and to them for examination the proceedings of the preliminary investigation alleged to have been conducted by him (R. 16, 163–164), which was also overruled (R. 17, 164–165).

Defendants then asked the court to hold a preliminary investigation in the cause before they either demur to or answer the complaint (R. 18–19, 165–166), which motion was likewise overruled (R. 19–20, 166–167).

Defendant Ocampo and Kalaw filed separate demurrers to the complaint (R. 21, 168), each of which were overruled (R. 29–30, 176–177).

The defendants having been arraigned, each defendant was granted a separate trial (R. 31).

Ocampo was found guilty and sentenced to six months imprisonment and to pay a fine of two thousand pesos and one-fifth of the costs of the action (R. 39).

Kalaw was also adjudged guilty and sentenced to nine months imprisonment and to pay a fine of three thousand pesos and one-fifth of the costs (R. 181–187).

The defendant Reyes was also convicted (R. 417), but Santos and Aguilar were acquitted (R. 420, 431).

On writ of error, the Supreme Court of the Philippines affirmed the judgment as to Ocampo, modified the sentence received by Kalaw so as to increase his period of imprisonment to twelve months, and revoked the sentence of Reyes. (R. 436.)

Thereupon Ocampo and Kalaw sued out a writ of error from this court.

SPECIFICATIONS OF ERROR.

The assignments of error appear at pages 453 *et seq.* of the Record.

The errors which we desire to urge upon the attention of this court may be summarized as follows:

1. The arrest and trial of plaintiffs in error was without a proper finding of probable cause and in violation of the rights secured to them by the Fourth Amendment of the Constitution of the United States and Section 5 of the Philippine Bill of Rights (Act of Congress of July 1, 1902.

2. Act No. 612 of the Philippine Commission—which denies as to the inhabitants of the City of Manila, under the circumstances therein stated, the right to a preliminary examination which is accorded to all other persons in the Philippine Islands—as applied in this case, operated to deprive plaintiffs in error of the equal protection of the laws guaranteed by the Constitution of the United States and section 5 of the Philippine Bill.

3. The conviction of Ocampo was erroneous, there being no evidence that he was proprietor of the newspaper or published the libel.

4. The Supreme Court of the Philippines had no jurisdiction to increase the punishment of Kalaw.

ARGUMENT.

I.

The arrest and trial of plaintiffs in error was without a proper finding of probable cause and in violation of the rights secured to them by the Constitution of the United States and the Philippine Bill of Rights.

Section 5 of the Act of Congress of July 1, 1902 (32 Stat. 691, 692), following the provisions of the Fourth and Fifth Amendment to the Constitution of the United States, provides:

> "Sec. 5. That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws.
>
> * * * * *
>
> "That no person shall be held to answer for a criminal offense without due process of law. . . .
>
> * * * * *
>
> "That no warrant shall issue but upon probable cause, supported by oath or affirmation. . . ."

The Code of Criminal Procedure of the Philippines (General Order No. 58) provides:

> "In the interests of justice, and to safeguard the civil liberties of the inhabitants of these islands, the Criminal Code of Procedure now in force therein is hereby amended in certain of its important provisions, as indicated in the following enumerated sections:
>
> * * * * *
>
> "Sec. 5. An information is an accusation in writing charging a person with a public offense, presented and signed by the promoter fiscal or his deputy, and signed by the clerk of the court.
>
> * * * * *
>
> "Sec. 12. Every person making complaint charging the commission of a crime or public offense, must inform the magistrate of all persons whom he believes to have any knowledge of its commission; and the magistrate shall issue subpœnas for such persons, requiring them to attend at a specified time and place as witnesses."

"Sec. 13. When a complaint or information alleging the commission of a crime is laid before a magistrate, *he must examine, on oath, the informant or prosecutor and witnesses produced, and take their depositions in writing.* If the magistrate be satisfied from the investigation that the crime complained of has been committed, and that there is reasonable ground to believe that the party charged has committed it, he must issue an order for his arrest. If the offense be bailable, and the defendant offer a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison."

The rights of inhabitants of the Philippines are further safeguarded by certain Acts of the Philippine Commission, as follows:

Section 40 of the Act 183 of the Commission established two municipal courts of limited criminal jurisdiction, and, in addition to vesting those courts with the powers necessary to the exercise of such jurisdiction, provided:

"Such courts may also conduct *preliminary examinations* for any offense, without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court. . . . *Every person arrested shall, without unnecessary delay, be brought before* a municipal court, *or a Court of First Instance, for preliminary hearing*, release on bail, or trial."

Section 44 of the Act provides for two justices of the peace in the City of Manila.

Act 194 of the Philippine Commission, section 1, provides:

"Every justice of the peace *in the Philippine Islands* is hereby invested with authority to make *preliminary investigation* of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law now vested in the judges of Courts of First Instance. It shall be the duty of every justice of the peace." . . . . (when written complaint has been made, and there is reasonable ground to believe that a

crime has been committed within his jurisdiction) . . . . "to issue an order for the arrest of the accused, and have him brought before the justice of the peace *for such preliminary examination.*"

The rights of the accused at such preliminary examination are set out at length in section 2 of this Act, and briefly stated, give the accused the right to examine the complaint and the affidavits, to present his own witnesses at the preliminary hearing, to be present himself and hear and cross-examine the witnesses for the government.

It thus appears that all magistrates in the Philippines having authority to arrest and commit persons accused of crime were, under the above legislation, required to grant preliminary hearings for the purpose of determining probable cause as well as for the purpose of determining whether the accused should be committed for trial or admitted to bail.

It is contended, however, that these requirements as to the finding of probable cause and preliminary examination were repealed as to the City of Manila by Act No. 612 of the Philippine Commission, which provides:

> "In cases triable only in the Court of First Instance in the City of Manila, the defendant shall have a speedy trial, *but shall not be entitled as of right to a preliminary examination* in any case where the Prosecuting Attorney, after a due investigation of the facts under section 39 of the Act of which this is an amendment, Act No. 183, shall have presented an information against him in proper form: *Provided*, however, that the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix bail or determine whether the offense is bailable."

Section 39 of Act No. 183, which was the Act incorporating the City of Manila, provides:

> "The Prosecuting Attorney of Manila . . . shall investigate all charges of crimes, misdemeanors, and violations of ordinances, and prepare the necessary

> informations, or make the necessary complaints against the persons accused, and discharge all other duties in respect to criminal prosecutions enjoined upon Provincial fiscals in the General Provincial Act, and the Criminal Code of Procedure . . . The prosecuting attorney . . . may, if he deems wise, conduct investigations in respect to crimes, misdemeanors, and violations of ordinances by taking oral evidence of reputed witnesses, and for this purpose may, by subpoena, summon witnesses to appear and testify under oath before him, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance."

It will be observed that Act No. 612 only undertakes to deny the inhabitants of the City of Manila the right to a preliminary investigation when the prosecuting attorney thereof sees fit to conduct an *ex parte* investigation, and that it does not touch at all upon the subject of probable cause for the arrest of the accused, a right so carefully guarded by Section 13 of General Order No. 58.

Reliance, however, is placed upon *United States* v. *Wilson*, 4 Phil. Rep. 317. But that case only held that the right to a *preliminary investigation* had been repealed, as to the City of Manila, by Act 612, this right having been claimed in that case under Sections 12 and 13 of General Order No. 58. This claim has occasioned misunderstanding, because those sections of General Order 58 relate, primarily at least, to the procedure for determining probable cause. That the Supreme Court of the Philippine Islands, in the *Wilson* case, did not intend to hold that the provisions of law as to finding probable cause were repealed by Act No. 612, conclusively appears from the fact that it refused to pass upon the claim that the warrant of arrest had been issued without a proper finding of probable cause, on the ground that that was an irregularity that could not be inquired into after trial and conviction.

(a) There was no finding of probable cause in this case, nor did the facts submitted by the committing magistrate justify such a finding.

The records shows, and it is not disputed, that the committing magistrate, in ordering the arrest of the accused, did so simply upon the strength of the information filed by the prosecuting attorney, the only support for which was his affidavit that "a preliminary investigation *has been conducted* under my direction, having examined witnesses under oath, in accordance with provision of section 39 of Act 183 (Manila charter), as amended by section 2 of Act 612 of the Philippine Commission." (R. 7–8.)

The answer to the motion to vacate the order of arrest, for want of a preliminary examination and a proper finding of probable cause, makes no contention that there was such a finding by the committing magistrate, but on the contrary asserts that the law of the Philippine Islands required no preliminary investigation or order of probable cause by a judicial magistrate, where an information had been presented by the prosecuting attorney, after investigation by him, as in this case (R. 10).

We respectfully submit that the finding of probable cause is a judicial act and cannot be thus relegated to the prosecuting attorney.

The prosecuting attorney is not, as stated by the Court of First Instance (R. 14), a judicial officer, nor does a certificate by him that he has conducted an *ex parte* investigation, without more, justify a finding by the court of probable cause.

Indeed, the prosecuting attorney admitted that the showing made by the information and affidavit filed by him was insufficient to justify an order finding probable cause, for in the brief filed by him in the Court of First Instance he said (R. 413):

> "The second contention of counsel that it was necessary for the Judges of the Court of First Instance of the City of Manila to issue an order, finding that probable cause exists, before issuing warrants of arrest, is equally

> as untenable. *It would be impossible for the Judge to issue an order saying that he found probable cause to exist unless he personally conducted the preliminary examination.* He would have nothing upon which to base the order."

But to prevent his admitting himself out of court, the prosecuting attorney added, italics ours (R. 413):

> "It might be said that the Judge could issue the order upon the faith of the preliminary examination held by the Prosecuting Attorney, as certified to in the Information. *If* this be true, *if* the Judge has the right to accept the preliminary examination made by the Prosecuting Attorney, and from it as certified in the Information, find that probable cause exists, *then* the Court has found that probable cause exists in this case by the issuance of the warrants of arrest."

It is manifest that the prosecuting attorney did not believe the hypotheses which he stated to be true, and that there was, in his judgment, no foundation in the facts presented by the information for a finding of probable cause in this case.

The prosecuting attorney had previously admitted that the investigations conducted by him "were not given such solemnity under Act 183 as to render subsequent investigations by the court before issuing warrants of arrest unnecessary" (R. 412–413).

(b) The proof of probable cause required by the fundamental law must be submitted to the committing magistrate himself, and not simply to an official accuser.

In 3 Woods, 502 (12126 Fed. Cases) Mr. Justice Bradley, in discussing this subject of proof of probable cause, said:

> "I am informed by his Honor, the District Judge, that great inconvenience is caused in this district by the arrest of persons charged with offenses against the revenue laws, against whom no sufficient evidence can be produced either before the grand jury to warrant an indictment, or before the traverse jury to justify a conviction, whereby much useless expense is caused to the Government and the personal liberty of the people is unneces-

sarily interfered with. One cause of this evil seems to be the fact that warrants are issued upon the affidavit of some officer who, upon the relation of others whose names are not disclosed, swears that upon information, he has reason to believe and does believe, the person charged has committed the offence charged. The District Judge not being satisfied that this is a sufficient ground for issuing a warrant of arrest, has desired my advice in the matter. After examination of the subject, we have come to the conclusion that such an affidavit does not meet the requirements of the Constitution, which, by the 4th Article of the amendments, declares that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; that no warrant shall issue but upon probable cause, supported by oath or affirmation describing the place to be searched and the persons to be seized. It is plain from this fundamental enunciation as well as from the books of authority on criminal matters in the common law, *that the probable cause referred to, and which must be supported by oath or affirmation, must be submitted to the committing magistrate himself, and not merely to an official accuser, so that the magistrate may exercise his own judgment on the sufficiency of the ground shown for believing the accused person guilty;* and this ground must amount to a probable cause of belief or suspicion of the party's guilt. In other words, the magistrate ought to have before him the oath of the real accuser, presented either in the form of an affidavit or taken down by himself by personal examination exhibiting the facts on which the charge is based and on which the belief or suspicion of guilt is found. The magistrate can then judge for himself and not trust to the judgment of another whether sufficient and probable cause exists for issuing a warrant. It is possible that by exercising this degree of caution some guilty persons may escape public prosecution, but it is better that some guilty ones should escape than that many innocent persons should be subjected to the expense and disgrace attendant upon being arrested upon a criminal charge, and this was undoubtedly the beneficent reason upon which the constitutional provision referred to was founded.

"In view of these considerations and to correct the evil alluded to, we have prepared and now make the following general order for the guidance of the commissioners of this court in the manner of issuing warrants of arrest against persons charged with crime, to-wit:—No warrant shall be issued by any Commissioner of this Court for the seizure or arrest of any person charged with a crime or offence against the laws of the United States, upon mere belief or suspicion of the person making such charge; but only upon probable cause supported by oath or affirmation by such person, *in which shall be stated the facts within his own knowledge constituting the grounds for such a belief or suspicion.*" (Italics ours.)

In *United States* v. *Tureaud*, 20 Fed. Rep. 621, certain persons were proceeded against by information for the commission of certain misdemeanors, and the defendants moved to quash the informations on the ground of the insufficiency of the affidavits constituting a part of the informations. The court said:

"The affidavits, the insufficiency of which are to be determined, are identical, and are as follows:

"'George A. Dice, being duly sworn, says: All the statements and affirmations in the foregoing information are true as he verily believes.

"'George A. Dice.

"'Sworn to and subscribed before me this 20th day of May, 1884.

"'E. R. Hunt, U. S. Commissioner.'

"The point, and and the sole point to be passed upon is whether this affidavit furnishes such a 'probable cause' and is supported by such an oath as is required by the 4th amendment to the constitution. . . .

"The rule which must govern this court and all magistrates who authorize arrests under the constitution of the United States as to the foundation for the issuance of warrants, is uniform, and is thus stated by Mr. Justice Bradley in the matter of a rule of court upon the subject. (3 Woods, 502.)"

The court then cites the case in Woods, and in quoting the same, italicises the statement that "the 'probable cause' re-

ferred to *must be submitted to the committing magistrate himself and not merely to an official accuser.*"

The court then proceeds:

> "The 'probable cause, supported by oath or affirmation' prescribed by the fundamental law of the United States is, then, *the oaths or affidavits of those persons who, of their own knowledge, depose to the facts which constitute the offence.*
>
> "It does not appear, from the affidavit upon which these proceedings are based, that the affiant has any knowledge whatever of the truth of the matters contained in the informations; but simply that 'all the statements and averments are true *as he verily believes,' i. e.* that he believes them to be true without any showing as to the grounds of his belief. Nothing was submitted by this affidavit upon which the 'grand jury could have found a bill,' nor 'upon which the Court could exercise its own judgment as to the sufficiency of the ground for believing the accused guilty.' The Constitutional provision must be utterly disregarded, or else it must be held that there is here no probable cause supported by the necessary proof."

The defendants were proceeded against in that case under Section 1014 of the Revised Statutes of the United States, which authorizes the usuages of the State to be followed as to the mode of process against offenders. But with regard to the effect of this statute, the court said:—

> "But this, if indeed it refers to anything more than the form of the warrant, could not, by any possibility, include any usage which is expressly prohibited by the Constitution of the United States."

An offer was made by the Assistant District Attorney to file another affidavit in the case as the one on file was found defective, but the court held that—

> "Where, as here, the probable cause has been acted on and the warrant issued, the information must be adjudged either good or bad upon the record, and the proofs made by affidavit cannot be supplemented any more than upon a hearing under a writ of habeas corpus."

The motions to quash the informations were therefore allowed.

In that case, the court held that, in order to issue a warrant under a finding of probable cause, the probable cause must be submitted to the committing magistrate and not to the official accuser. But it went further and held that an affidavit annexed to the information in which it was stated that the averments of the information were true, as the affiant verily believed, was insufficient. In the present case there is not only no affidavit by a real accuser—if we take the witnesses to be the real accusers—*but there is not even any affidavit on the part of the official accuser stating that he believes the facts in the information to be true.* As the information shows, all that the prosecuting attorney has done is to sign the same under oath and to swear to the additional fact that he has examined the Government's witnesses.

State v. *Gleason*, 32 Kan. 245, presents a state of facts and law analogous to that which appears in the present case. In that case, the defendant was prosecuted for the violation of the liquor laws. The county attorney commenced proceedings by information or complaint in the district court. The complaint was verified by the county attorney upon information and belief. The defendant moved the court to set aside and quash the warrant issued upon the information, and for his discharge, for the reason that no probable cause was shown, supported by oath or affirmation. The motion was overruled. The defendant objected to being tried upon the information and declined to plead thereto or to make any defence. The court ordered a plea of not guilty to be entered in his behalf. A verdict of guilty was rendered, and the defendant was sentenced to pay a fine of $100.00 and costs, and to be committed until the same were paid.

It was argued that no warrant could lawfully issue upon a complaint or information such as the one in the case cited as the first step in a criminal prosecution. The statute provided that if the county attorney should be notified by any

person of the violation of the liquor act, it should be his duty to inquire into the facts,—

> "and if there is a reasonable ground for his instituting a prosecution, it shall be the duty of such county attorney to file a complaint in writing before some court of competent jurisdiction, charging the suspected person of such offence and he shall verify such complaint by affidavit; but it shall be sufficient to state in such affidavit that he believes the facts stated in such complaint to be true."

In the State of Kansas, as in the Philippine Islands, a statute provided that, upon a complaint made to a magistrate that a criminal offence had been committed, a warrant might be issued by such magistrate if, after examination the complainant's witnesses on oath, it appeared that the crime had been committed. Paragraph 15 of the Kansas Bill of Rights included the constitutional provision, as does the Philippine Bill, that no warrant shall issue but upon probable cause. Interpreting this provision the court said (*ib.* p. 249):

> "Of course it must be conceded that the Constitution is the superior and paramount law, and that section 15 is declaratory of the fundamental rights of the citizen, and is intended to protect him in his liberty and property against the arbitrary action of those in authority. So long as this section is in force, the principles therein declared are to remain absolute and unchangeable rules of action and decision. The legislature cannot infringe thereon and the courts must implicitly adhere thereto. *If no warrant shall issue but upon probable cause, supported by oath or affirmation, the support must be something more than hearsay or belief.* Where a person or officer states upon oath 'that the several allegations and facts set forth in the foregoing information are true, as he has been informed, and verily believes,' he may have no knowledge of or information upon the subject except mere hearsay, and yet he can conscientiously make such declaration. A complaint thus verified proves nothing. It does not state facts, but only the affiant's hearsay knowledge and belief; it is not a com-

plaint, an information or a declaration supported by oath or affirmation." . . .

"Said paragraph 15 is little more than the affirmation of the great constitutional doctrine of the common law. Article 4 of the Amendments to the Constitution of the United States is almost identical with said Article 15; and Story says that 'this provision seems indispensable to the full enjoyment of the rights of personal security, personal liberty and private property . . . and its introduction into the amendments was doubtless occasioned by the strong sensibility excited both in England and America upon the subject of general warrants almost upon the eve of the American Revolution.' (2 Story on the Constitution, par. 1902.)

"If a warrant in the first instance, may issue upon a mere hearsay or belief, then all the guards of the common law and the bill of rights of our own constitution to protect the liberty and property of the citizens against arbitrary power, are swept away. There is no necessity for going so far, and the constitution warrants no such conclusion. The expressions of the bill of rights are very plain and very comprehensive, and cannot be misunderstood. The oath or affirmation of a complaint or information upon which a defendant is arrested in the first instance must set forth that the allegations and the facts therein contained are true. If a county attorney cannot make such a verification, then the information or complaint should be made by oath of some one who can. If a county attorney files a complaint and verifies it upon belief under paragraph 12 of Chap. 128, he must also attach thereto a statement supported by oath or affirmation of some other person willing to testify of his own knowledge that the facts and allegations stated in the complaint or information are true." (Italics ours.)

In *Swart* v. *Kimball*, 43 Mich. 443, it was held by Judge Cooley that

"an affidavit attached to an information and stating that the affiant has good reason to believe, and does believe, the contents of the information to be true, is not such a verification as will warrant an arrest, especially

where there has been no preliminary examination and a *prima facie* made out." (Headnote cited.)

We submit, therefore, that the procedure by information made applicable by Act 612 of the Philippine Commission to the City of Manila, did not constitute a due finding of "probable cause" as that term is used in the Fourth Amendment to the Constitution of the United States and in Section 5 of the Philippine Bill of Rights.

(c) The objection as to the warrants of arrest being issued without a proper finding of probable cause was seasonably made, and the defects in that respect were not cured by trial and conviction.

The record shows that the objection was made with due promptness. The defendants were arrested and brought into court on November 5, 1908 (R. 8) and they filed their motion to vacate the order of arrest two days later, November 7, 1908 (R. 7–8), before any further proceedings were had. The mere fact that they gave bond, at the time of their arrest, in order to secure their release, cannot properly be held to be a waiver of this constitutional guarantee.

The Supreme Court of the Philippine Islands cites, as an answer to the contention that the arrest was illegal, the fact that it is no objection to a criminal prosecution that a person be unlawfully kidnapped for the purpose of bringing him within the jurisdiction of the trial court. But that circumstance is wholly inapposite. A person may be unlawfully brought within the territorial jurisdiction of the court, but when within that jurisdiction he can only be proceeded against in accordance with the fundamental law, and even a kidnapped person could make the point that the warrant for his arrest was issued without probable cause.

Certainly a right which is deemed so valuable as to be safeguarded by a special provision of the Federal Constitution, as well as of the Philippine Bill of Rights, should not be held to be held extinguished by an abuse of the same.

In *Kerr* v. *Illinois*, 119 U. S. 436, 440, where this court applied the principle that ordinarily it is immaterial how a person may be brought within the jurisdiction of the trial court, it was careful to except from the operation of the rule the case where "*there was some positive provision of the Constitution or laws of this country violated in bringing him into court.*"

This court also said in the *Kerr* case that "we do not intend to say that there may not be some proceedings previous to trial, in regard to which the prisoner could invoke the provisions of this clause of the Constitution," referring to the due process clause. We submit, that in view of the nature of the system of criminal procedure in vogue in the Philippines, where neither grand nor petit juries exist, both the requirement as to probable cause in the case of warrants of arrest and the right to preliminary examination are of such importance as to demand that they be recognized and enforced even after trial and conviction.

The importance of preserving these constitutional guarantees is shown in this very case. It is probable that none of the persons originally accused, except Kalaw, would ever have been put to trial if the committing magistrate had undertaken to determine for himself whether there was probable cause to believe them guilty, or if they had been granted a preliminary hearing, at which their connection with the publication might have been ascertained. Santos and Aguilar were acquitted in the Court of First Instance because of the insufficiency of the evidence to support the complaint (R. 420, 421), and Reyes was acquitted in the Supreme Court because, although an editor of the paper, there was no evidence to show that he was responsible for the publication of the libel (R. 435–436). Ocampo, as we shall hereafter point out, ought to have been acquitted on like grounds.

In the *Weeks* case, decided February 24, 1914, this court recognized the importance of enforcing such constitutional guarantees as those here in question even after trial and conviction. That decision is controlling here, as there is no dis-

tinction in principle between seizing the private papers of a citizen without a warrant and arresting him on a warrant issued without probable cause. And here, as there, the objection was seasonably made, by proper motion in advance of trial.

II.

Act No. 612 of the Philippine Commission, which denies as to the inhabitants of the City of Manila, under the circumstances therein stated, the right to a preliminary examination which is accorded to all other persons in the Philippine Islands, as applied in this case, operated to deprive plaintiffs in error of the equal protection of the laws guaranteed by the Constitution of the United States and section 5 of the Philippine Bill.

In defense of this discrimination against accused persons in the city of Manila all the Supreme Court of the Philippines has to say is, that there is no requirement of uniformity of legislation throughout the Islands, and that the City of Manila is governed by a special charter and has certain powers not given other municipalities. (R. 423.)

The requirement of uniformity of legislation in matters of this kind is contained in the provision of Section 5 of the Act of Congress of July 1, 1902, prohibiting the enactment of any law for the Philippines denying to any person the equal protection of the laws.

The right to a preliminary examination or hearing is manifestly a valuable right, especially in a jurisdiction where grand juries do not exist, and if such protection against unjust prosecution is accorded to one person or class of persons by the Philippine Commission, it is manifestly a denial of the equal protection of the laws not to accord it to others.

This was the view of the Supreme Court of the State of Colorado in *re Lowrie*, 8 Colo. 499, where the validity of a statute of the State dispensing with grand jury proceedings in certain courts of the State was involved, the legislature having authority under the State Constitution to abolish the grand jury system entirely. The Court there said (*ib.* p. 504):

"When the legislature undertakes to abolish as to a portion of the state, rights and privileges guaranteed by both the state and federal constitutions to the whole people of the state until stricken out of the fundamental law, it should look beyond a particular provision of the constitution intended only to regulate the practice and proceedings of the different classes of courts, so that the same should be uniform in those of the same class or grade.

"Such uniformity was never intended to be attained by ignoring or abolishing the fundamental rights of any portion of the people. The legislature may prescribe the practice and proceedings of the courts, but such power must be exerted within constitutional limitations and restrictions . . The essential question presented for our consideration, is, Has the general assembly the power under the restrictions of the federal and state constitutions, to abolish the grand jury system as to the criminal courts only, and to substitute as to them, the system of prosecuting felonies by information, leaving the grand jury system in full force and effect as to the district courts throughout the state? . . .

"Let us now consider the effect of the Act of 1883 upon the criminal jurisprudence of this state with respect to its constitutionality. In all but three counties of the state no person can, for a felony, be prosecuted otherwise than upon an indictment of the grand jury. In said three counties this right of an investigation of the charge by a grand jury is only recognized in prosecutions instituted in the district courts, while prosecutions originally instituted in the criminal courts in the same grade of criminal offenses are prosecuted upon informations of the district attorney. . . .

"Clearly, if the object of the grand jury system is to grant certain fundamental rights of every citizen of the state, it follows, according to elementary principles of construction that the change, regulation or abolition of the system must be so made as to equally affect the whole community in respect to the same rights and immunities under the same or similar circumstances.

"It cannot reasonably be contended that such is the effect produced by the Act of February 7th, 1883. The effect of such legislation to the citizen is, if he be charged

with the commission of a felony or infamous crime not capital, within the jurisdiction of a criminal court, an information may be filed against him therein upon the oath of a single informer, and he may be put upon his trial therefor; whereas if charged with the commission of the same offence outside the said jurisdiction, or if proceedings be instituted against him within such jurisdiction but in a district court instead of a criminal court, he would be accorded the right and privilege of having the truth of the charge investigated by a grand jury composed of his peers before he could be put to the expense, inconvenience and disgrace of a public trial. . . .

"The only construction of those provisions of the constitution conferring power upon the legislature to abolish the grand jury system which is consistent with the principles of constitutional law *is that the legislature may abolish the entire system.* Changes in the system itself may be made or regulations made, but no portion of the state or the residents thereof can be deprived of the benefits or the securities of the system as changed or regulated. To hold otherwise would be in conflict with section 1 of the 14th Amendment of the constitution of the United States, and in conflict with Section 25, Article 2 of our own constitution prohibiting the deprivation of rights without due process of law. The two constitutional provisions above mentioned contain practically the same safe-guards against the species of legislation under consideration. . . .

"Any act of the general assembly which violates or ignores the foregoing provisions of the federal or state constitutions must be held invalid to the extent of such violation.

"We come now to consider the legislation in question from a somewhat different standpoint, to-wit;—whether it affords due process of law within the constitutional meaning of that maxim or principle; and whether it can be said to comprise a part of the law of the land within the meaning of that phrase.

"The rights intended to be protected by the principles embodied in the above phrases are the rights to life, liberty and property; the manner of protecting them by the enactment of general laws recognizing the equal

rights of every citizen and providing for their due and uniform administration.

"In order to be constitutional they must make provision for equal protection to every citizen in relation to these essential rights, and they must be uniform in their application to every person.

"If the law of the state authorizes a prosecution for a felony only upon an indictment of the grand jury, a prosecution by another method would contravene the principles just mentioned. . . ." (Italics ours.)

In *re Jilz*, 3 Mo. App. Rep. 243, it appeared that the constitution of the State of Missouri provided that no one could be deprived of life, liberty or property without due process of law. An act of the legislature prescribed a punishment for a certain crime in St. Louis County different from that prescribed by the general law, and was held unconstitutional. The court said:

"The law of the land is interpreted to mean a general public law operating equally upon every member of the community; and every partial law by which the rights of individuals are prejudiced or taken away, is held by the courts to be void, as being in violation of this law of the land. . . . .

"A law which should prescribe death as the punishment of murder in one county and imprisonment as the penalty for the same crime in other parts of the state would be void because not operating equally upon all inhabitants of the state. The general law applicable to the state prescribes, as a punishment for the offence of which the petitioner was convicted, imprisonment in the county jail not exceeding one year, or a fine not exceeding $500.00, or both such fine and imprisonment. A law prescribing a different punishment from this in St. Louis County is clearly unconstitutional. It follows that so much of the act referred to, establishing the Court of Criminal Correction, as limits the punishment of this misdemeanor in St. Louis County to imprisonment for six months is void."

In *People* v. *Mangold*, 71 Mich. 335, the court said:

> "While our Constitution provides some discretion in regard to criminal jurisdiction of justices, it gives to the Circuit Courts original jurisdiction, except as otherwise provided. . . . It also secures the right of trial by jury and several other important safeguards against abuses. This right to trial by jury means more than that there shall be a trial before a body of laymen. It involves all the incidents of common law jury trials, including challenges to the array and to the poll . . . and whatever else is essential on hearing or review. And under the Constitution it requires substantial equality throughout the state in methods of prosecution."

In *People* v. *Police Justice*, 7 Mich. 456, it was said:—

> "It would be extremely unjust—to use no stronger language—to punish offenders against a general criminal code of the state for an offence committed in one town differently from the way in which he would be punished for the same offence in another. Uniformity is a cardinal principle in the trial and punishment of crimes in all civilized countries." (p. 465.)

We submit, therefore, that Act 612, which makes the right of an accused person in the City of Manila to a preliminary hearing, before he shall be put to trial, depend upon whether the prosecuting attorney *has seen fit* to conduct an *ex parte* investigation of the charge, is a denial of the equal protection of the laws and in violation of the Philippine Bill of Rights.

III.

The conviction of Ocampo was erroneous, there being no evidence that he was a proprietor of the newspaper or published the libel.

Section 2 of Act 277 provides:

> "Every person who wilfully and with a malicious intent to injure another publishes or procures to be published any libel shall be punished by a fine of not exceeding two thousand dollars or imprisonment for not exceeding one year, or both."

Section 6 of the same Act provides:

> "Every author, editor, or proprietor of any book, newspaper or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial as fully as if he were the author of the same."

The purpose and effect of the above provisions are clear. That of section 2 is to punish criminally any person who wilfully and deliberately, with full knowledge of what he is doing, publishes a libelous statement. That of section 6 is to punish criminally certain classes of persons who may not have had the *actual* intent to publish the libel, but to whom, on account of the relation in which they stand to the vehicle of publication, the statute ascribes a *constructive* intent.

It was not proven, and the Government did not attempt to prove, that Ocampo wilfully published the libelous article, or, in fact knew of its existence; nor did the court so hold. Nor was it shown that he was the author or editor of the article or in anywise controlled the publication. His conviction was sustained, however, on the ground that the evidence showed that he was part owner or proprietor of the paper and also its administrator or manager.

The only questions to be considered in this connection then are, therefore:

> (a) Does the evidence, as a matter of law, warrant the finding that Ocampo was one of the proprietors of the Renacimiento when the libel was published?
>
> (b) Is he liable, under the statute, for a publication made without his knowledge, simply because he was at that time the "administrador" of the paper?

(a) Ocampo was not and is not proprietor of the paper.

All that the evidence shows bearing on the question of Ocampo's ownership of the Renacimiento is that he, in common with other prominent Filipinos, contributed 500 pesos

(250.00) toward the establishment and running of the newspaper. But it appears that such gifts were absolute and unconditional and made without any expectation of return or profit, and that the contributors did not, by reason of said gifts, regard themselves as owners or proprietors of the paper or as having pecuniary interest in it.

The evidence on this part is clear and consistent and wholly uncontradicted. That the court may be fully advised, we quote from it at length.

Arcadio Arellano, witness for the Government, testifies on this point (R. 53, 54):

> "Q. Do you know whether or not Sr. Ocampo owns an interest in that paper?
> "A. Yes, sir, he is one of the shareholders of that paper.
> "Q. What share has he in the paper?
> "A. I believe he has a share of five hundred pesos.
> "Q. How often is El Renacimiento published?
> "A. Daily.
> "Q. You say Sr. Ocampo has a share of five hundred pesos in El Renacimiento? Is that a joint stock company, a corporation or a partnership?
> "A. I believe it is a philanthropic partnership.
> "Q. Do you know if it is registered in the Mercantile Register?
> "A. I do not know.
> * * * * *
> "El Renacimiento was founded on the idea of some young men who wanted to establish a better understanding between the people of the Philippine Islands and the Americans who had but recently arrived here. With this great idea in view there was formed an association, and that group of young men formed the editorial staff of El Renacimiento, and as one left another came in and took his place."

After being asked the names of those men who now form the group publishing El Renacimiento the witness was asked (R. 54):

> "Q. Now who are the other owners of El Renacimiento? is there others besides Sr. Ocampo?

"A. The shareholders are Sr. Martin Ocampo, Sr. Manuel Palma, Angel Jose, Felipe Baretto, Gregorio Mariano and myself."

On a cross-examination this witness testified (R. 55):

"Q. What relation have you got with this paper?
"A. Shareholder.
"Q. For what amount?
"A. Seventeen hundred and fifty pesos.
"Q. Have you received any dividend from that amount?
"A. Up to the present time, none.
"Q. Did you intervene in any way in the management of the business?
"A. I did not.
"Q. Have they rendered you a statement of account for that money invested by you?
"A. No.
"Q. Under what condition then did you deliver that money?
"A. It was for the purpose of establishing a better understanding between the Filipinos and the Americans.
"Q. When you delivered that money did you expect to gain from it? (Objected to.)
"Q. Do you claim to have any rights over that money delivered by you?
"A. No, sir.
"Q. So when you delivered that money to them you disposed of it forever?
"A. Yes, sir.
"Q. Without any expectation of recovering it again?
"A. Yes, sir.
"Q. Can you tell me if the other members who founded that paper did so under the same conditions and understanding that you did?
"A. I cannot state as to that."

On redirect examination the following questions and answers were given (R. 57):

"Q. What is the name of this association you speak of as publishing El Renacimiento?
"A. I believe it is called Renacimiento.
"Q. Is it registered under that name, or any other name in the Mercantile Register?
"A. No, Sir.

Again (R. 57):

"Q. You say you have not received any return from the money you invested in that paper?

"A. Not one cent up to the present time.

"Q. Is it not true that all the profits from the publication of that paper have been reinvested in the plant, and to the improvement of the paper?

"A. I believe so."

Angel Jose, the man who was mentioned by witness Arellano as being one of the shareholders, testified (R. 110, 111):

"Q. Have you any relations with the newspaper El Renacimiento?

"A. None whatsoever.

"Q. Did you have anything to do with the establishment of that paper?

"A. Yes, sir.

"Q. Can you state to the court in which way you took part in the founding of that paper?

"A. I only remember that it was about seven years ago when Sr. Rafael Palma spoke to me about this matter and asked me to contribute something towards the founding of a Filipino newspaper, which was to be carried on for patriotic motives, that is to say, do something for the benefit of the country.

"Q. Was there any other aim besides that?

"A. He also told me it was to cultivate a better understanding between the Filipinos and the Americans.

"Q. Did you respond to the invitation of Sr. Palma?

"A. Yes, sir.

"Q. Can you tell us in what way?

"A. By turning over to him a certain amount.

"Q. Do you remember how much that was?

"A. Five hundred pesos.

"Q. Did you not know the name of the paper before giving this money?

"A. No, sir.

"Q. Under what conditions did you give that five hundred pesos?

"A. As a contribution to be used for the benefit of the country.

"Q. Upon giving that money did you expect to get some benefit or gain out of it?

"A. No, sir.

"Q. Did you receive any interest from the time you gave that money in this way?

"A. No, sir.

"Q. Did you ask them in what way they had invested that money?

"(Question objected to).

"Q. Did you know who was going to manage this fund to which you have contributed?

"A. To a certainty no, but I did suppose that Sr. Palma would be one of them.

"Q. Did you know whether any newspaper was published for purposes proposed to you.

"A. Yes, sir.

"Q. What act did you perform, or what investigation did you make as to the management of that fund?

"A. None.

"Q. Why not?

"A. Because I was not interested.

"Q. Did you expect to receive back that contribution of yours?

"A. No, sir.

"Q. Do you know who had charge of the administration of that fund?

"A. Do you mean in our fund?

"Q. Yes.

"A. Positively, no, but it seems to me that it was to be Sr. Palma.

"Q. What was the first name of that Sr. Palma?

"A. He was the oldest brother of Don Rafael Palma.

"Q. Don't you remember his name?

"A. No, sir.

"Q. And afterwards who had charge of the administration of that fund?

"A. Afterwards I learned it was Sr. Ocampo.

"Q. Do you know who is the actual proprietor of the newspaper El Renacimiento?

"A. No, sir.

"Q. Are you not the proprietor to the extent of the money contributed by you?

"A. I do not know, I do not believe I am a proprietor because I gave that money as a gift to a patriotic fund."

Felipe Baretto, said by the witness Arellano to be one of the shareholders in El Renacimiento, after stating that he was approached by Sr. Ocampo on the question of founding a newspaper for the purpose already mentioned, testified (R. 113):

"Q. What did you do when Sr. Ocampo spoke to you about this matter?
"A. I gave him a certain amount of money.
"Q. How much?
"A. Five hundred pesos.
"Q. Under what conditions did you give that?"

(This question objected to as immaterial and objection sustained).

"Q. Who is the proprietor of that newspaper?
"A. Personally I am not familiar and have no knowledge as to who the owner is.
"Q. Did the money you contributed not constitute you a proprietor to that extent?
"A. I never thought or believed myself to be one of the proprietors because I gave the money as a gift or donation.
"Q. What benefit did you receive on account of that money?
"A. None whatsoever and I did not expect any either.
"Q. Why not?
"A. Because it was a donation or a gift, and I did not expect any return for it."

On page 114 of the Record:

"Q. In case of a deficit or loss will you have to contribute?
"A. No, sir.
"Q. Why not?
"A. Because I do not consider myself a co-participant."

From the evidence it appears that the newspaper was the result of an association formed by a group of prominent young Filipinos some of whom have since become members of the Commission and of the Philippine Assembly, who, as Government's witness Arellano points out, formed the editorial

staff or directorate or management of the paper, and as one left, another came to take his place (R. 54); that the funds solicited for the purpose were handled by successive "administradores" first by Palma, then by Ocampo; and that the amounts given were in the nature of patriotic contributions, and, although called *shares* by Arellano, they did not, as he further makes clear, call for return, or give the contributor any financial benefits or other rights. The contributors were not, therefore, shareholders in any true sense of the term, nor did their contributions make them part proprietors of the newspaper as held by the courts below.

"Proprietor" is defined (8 Cyc. 683) as—

> "An owner, the person who has the legal right or exclusive title to anything, whether in possession or not; . . . a possessor in his own right; an owner; a proprietary."

Manifestly the gift of a certain sum to a patriotic enterprise such as this—the establishment of a newspaper in the public interest—gave the donors no legal right or title thereto either in whole or in part. The contributors may have had an equitable right to see that their gifts were not mis-applied, but such an interest falls far short of the absolute ownership implied by the term proprietor.

The reason, both at common law and by statute, for holding the proprietor of a newspaper liable is that ownership connotes responsibility and control, the acts of those actually engaged in its publication being regarded in law as the acts of the owner, although done without his knowledge and consent (*Folwell* v. *Miller*, 145 Fed. 495). Besides, the proprietor profits financially from the conduct of the paper. (*Rex* v. *Gutch et al.*, Moo. & Mal. Rep. 433, 437.)

But it is clear that a mere contributor to the fund for establishing the Renacimiento—and that is all Ocampo was (R. 53)—acquired by reason of his contribution no owner-

ship in or control over such paper, his contribution being an absolute gift, without expectation of return or of profit therefrom. The contributors were in no sense partners, because partnership implies community of interest in a business enterprise, and, above all else, in the profits resulting therefrom (Parsons on Partnership, 4th ed. sec. 61).

It is to be remembered that all of the contributors gave their contributions as gifts or donations, and that none of them regarded themselves as proprietors. There is no evidence to show proprietorship of the newspaper in Ocampo other than the fact that he was a contributor. It is true that the Government witness Caldes, mercantile registrar for the province of Manila, testified that on one occasion Ocampo desired him to have a deed to a house he was seeking to buy made out in his name as administrator of El Renacimiento, and that when the registrar asked Ocampo if El Renacimiento was a commercial organization he answered negatively and then told him to make out the deed in his own name (R. 58–60). But if this suggests anything, it is that Ocampo regarded that property as belonging to the newspaper and not to himself and that it was in order to avoid technical legal questions that he concluded to take the property in his own name.

It may be suggested that the legal title to the newspaper must be somewhere, but even so, it is sufficient for the defense to call upon the Government to show that it is in Ocampo either in whole or in part, and this it has utterly failed to do. All that the record shows is that Ocampo was contributor to the fund for the establishment of the paper, and that he succeeded Palma as the administrator of the paper. As we shall hereafter show more fully, the administrator is merely the financial agent of the paper, and while he may have charge of the funds, his possession thereof gives him no ownership of the paper, or no participation in its policy, editorial or otherwise.

The only question left open to discussion in this connection is whether the fact that Ocampo was "administrador" of the paper is sufficient to make him liable for a libelous statement published in the newspaper without his knowledge.

(b) Ocampo was not liable as "Administrador" of the Renacimiento.

It was not attempted to be proved that Ocampo was the author of the libelous article, or that he was advised of the same, and the evidence shows that his duties as "administrador" charged him with no knowledge of or responsibility for the editorial or general policy of the paper. It is clear, therefore, that he does not come within the scope of section 2 of the Act of 277 of the Philippine Commission above quoted, which only applies to those "who wilfully and with a malicious intent publish a libel." Certainly the mere fact that, as "administrador," he employed and paid those who were engaged in distributing the paper (R. 61), with the contents of which, apart from the advertisements, he had nothing to do, does not amount to the wilful and malicious publication of the libelous article, it not appearing that he had actual knowledge of said libel at the time of publication, or that his duties as administrador charged him with such knowledge.

Construing sections 2 and 6 of the statute together, as should be done, it is clear that only editors and proprietors of a newspaper can be held for the publication of a libelous article therein without proof of actual knowledge and intent on their part to publish said libel. Upon editors and proprietors the statute imposes responsibility because of the control over the contents of the paper which their relationship to it gives. But not only is an "administrador" not within the language of the statute, but he is also not within the considerations which have suggested that responsibility for the publication of a libelous article should be imposed upon the proprietor and editor.

The reasons for holding the owner or proprietor are thus stated in *Folwell* v. *Miller*, 145 Fed. 495:

"The owner of the newspaper is liable for whatever may be published in it, because all those who are engaged in preparing and publishing it are his servants, and the publication is an act within the scope of their employment. It is therefore deemed the act of the owner himself, and although done without his knowledge, or contrary to his express instructions, he must bear the consequences."

And in *Mecabe* v. *Jones*, (N. Y. Com. Pleas Rep. 10 Daly, 222, 223) it was said that the proprietors of newspapers are liable for defamatory matter put into the paper without their knowledge because of the delegation by them to others to do the wrong; *the printer and editor because of their direct connection with and control of the contents of the paper.*

In *Weil* v. *Nevin*, (1 Monaghan, Penn. 65) where there was nothing to show that the defendant, an assistant editor, knew of the libelous publication, the court said:

"The general editor may be bound to know all that goes into the paper of which he has the supervision but not so an assistant editor, *for his powers are limited; hence he can only be held for what he himself does, or knowingly permits to be done.*"

In *Spooner* v. *Daniels*, Fed. Cases No. 13, 244a, where the evidence established the fact that the defendant was only a salaried writer on the paper, his liability was held not to be co-extensive with that of the editor.

An examination of the evidence will show that the considerations justifying the liability of editors, proprietors, managers, printers and authors of newspapers are totally lacking in the case of Ocampo; and on the other hand, that his duties as "administrador" or "business manager" were much more limited than those of the assistant editor in *Weil* v. *Nevin*, (*supra.*)

That this is the case appears (1) from such portions of the evidence as deal with the establishment and operation of Spanish and Filipino newspapers in the Philippines, and (2) the participation of Ocampo in the conduct of the Renacimiento.

Establishment and operation of Spanish newspapers in the Islands.

The establishment of the native papers in the Islands shows that they are composed of two different and distinct departments: the "administrative" and "editorial", and that the "administrador" or business manager has, and can have nothing to do with the "editorial" part. We quote the word "editorial" purposely, since, as the record will show that that part of the management of the paper known as the "editorial" part is not at all confined to what the term is generally taken as meaning here. The editorial department of the paper is the department which controls exclusively not only editorials, but everything which appears in the paper exclusive of commercial notices and advertisements, as well as the entire policy of the paper.

Liquete, witness for the defense states (R. 91.) that the administrador is only in charge of the economical part of the paper and "everything relating to what policy the paper shall pursue comes under the control of the director" (manager), and all the written matter in the paper with the exception of the advertisements is under the control of the director also. (Jaime de Veyra former editor of the Renacimiento and now member of the Philippine Assembly, R. 103.) And see as to the Renacimiento itself the statement of Guerrero, formerly its director, and now member of the Philippine Assembly, (Rec. 105).

> "The director has under his control everything regarding the editing of the newspaper, and there is under him all the staff of the paper, and the mechanism also . . . The administration itself is under the subordination of the director, and by virtue of this organization the director is responsible for everything which is published and inserted in the newspaper." (Salas, Director of *El Mercantil*, R. 121.)

And see the decision of Judge Araullo in his judgment in the case of *United States* v. *Ocampo* (Def. Ex. 10, R. 145–147); also statements of witness Salazar (R. 80) Bustillo (R. 81) and Sevilla (R. 83).

Participation of Ocampo in operation of Renacimiento.

Arcadio Arellanes, for the Government, states—

Ocampo's office was entirely distinct from the editorial and printing department (R. 55). He had "no intervention at all" in the publication of articles (R. 55). The articles published do not go through his hands, and that "the only part of the newspaper which comes under the control of Sr. Ocampo" is the commercial notices (R. 56).

Pasicolan, for the defense—

Ocampo is not even in charge of the printing of the articles in the newspaper (R. 76), and the proofs are not sent to him (R. 77). He does not intervene in the editing of the articles (R. 77). The editorial part of the management is entirely separate from the business part (R. 78).

H. H. Marcus, for the defense—

Ocampo is the "business manager" of the paper (R. 81), and has no intervention in the articles published (R. 82). He intervenes only in the "advertisements and the business part pure and simple." (R. 82.)

Lope K. Santos, a director of the paper—

Ocampo has "absolutely no" intervention in the editorials published (R. 84), or in the printer's proofs (R. 84). He, the witness, "is the only one who is responsible for all which appears in the newspaper" (R. 85). Ocampo has nothing to do with the appointment of editors, except to state whether the salary designated by the director for an editor appointed by the latter is proper (R. 86).

Liquete for the defense—

Ocampo has not to do with the editorial or *directory* (managing) part of the newspaper, but simply with the commercial notices or advertisements (R. 90). The "business manager cannot intervene and have anything to do and he is in no condition to know what is going on in the paper as far as the editorial part is concerned." (R. 91.)

Aunario, for the defense—

> Ocampo looks after the material interests, the financial or economic part of the paper, and has nothing to do with the editorial department (R. 93). What articles and editorials shall appear in the paper come under the control of the director (R. 93). The director is in charge of the selection of the editorial staff, and they are directly responsible to the director. (R. 93). The *administrador* is concerned with the advertisements, subscriptions and communications which are paid for, and that even these must be sent to the director to determine whether they shall be published (R. 94).

Faustino Aguilar, editor in chief of the Renacimiento—

> Ocampo has nothing to do with the publication of any article on its way to the printers (R. 95). The commercial part of the paper, such things as advertisements, etc., come under the control of Ocampo, but that with the publication of all communications, whether paid for or not, the defendant has nothing to do (R. 95). He does not even read them in the course of business (R. 96).

Fidel Reyes, one of the editors of the Renacimiento—

> Ocampo has absolutely nothing to do with the publication of any articles in the paper, which are all sent to the printer by the director under whose authority they are printed (R. 99). He is asked:
>
> "Q. What part of that newspaper comes under the immediate control of Sr. Ocampo?
>
> "A. The commercial advertisements.
>
> "Q. And outside of the commercial advertisements is there any other part of that newspaper which comes under his control?
>
> "A. No, sir." (R. 100.)

The defendant Kalaw, on taking the stand, was questioned as follows:

> "Q. Can you state to the court who published this editorial which is the subject-matter of the complaint?
>
> "A. I published it as director.

"Q. So you are the only one responsible for that editorial?

"A. Yes, sir, as director of the newspaper.

"Q. And no other person is responsible for that editorial?

"A. Nobody else is responsible for it. (R. 333.)

The assessors in the case of Fidel Reyes, one of the editors of the Renacimiento, in stating their disagreement with the judge in that case said (R. 419):

> "The foregoing conclusions are based also upon the testimony for the witnesses for the defence, tending to show, as it has been satisfactorily shown, that under the organization of the Spanish and Filipino newspapers in the Philippine Islands, the person responsible in the eye of the law for the publication of the papers is the director of the paper; and in the present case the accused was not such director, and could not have been, for the reason that Teodoro M. Kalaw was the director of the papers."

To sum up: Ocampo is an employee (R. 86) whose activities on the paper are limited to the payment of the salaries of other employees when authorized to do so by the director (manager) and to taking charge of the commercial notices and advertisements in the paper, and paying expenses generally; who has absolutely no control over any other articles in the paper—not even seeing them in the regular course of his employment; and absolutely nothing to do with the policy of the paper, which is left entirely to the director, or manager.

No attempt was made to contradict this testimony, the Government evidently resting its case on so much of the evidence as showed that Ocampo was the "business manager" and had subscribed 500 pesos to the general fund.

The court states in its decision that "an examination of the proof shows, beyond question that Mr. Ocampo was the administrator, manager and one of the owners of the Renacimiento" (R. 430.)

It shows that he is "administrador", yes, as that term is used in Spanish in this connection, to wit, "business manager"

with most limited powers. But to contend that he is the "manager" as that term is understood with regard to American newspaper terminology, is simply to misstate the fact, besides juggling with terms. If a "manager" he is a manager who has no voice in the policy of the paper, no voice with regard to what shall appear in its columns except commercial notices and advertising, and absolutely no control of the editorial department; a "manager" whose duty does not require him in the course of business to cast a single glance at what the paper contains in the way of reading matter, even on its way to the printer.

The liability of the owner arises from the fact that the acts of his agents, done by his direction are, in the eye of the law his own acts; that of the manager and editor from the fact that the publication of articles in the paper is a matter which, by virtue of their positions, constructively if not actually comes under their official supervision, and for which they are consequently responsible. Only so much of the paper as came within the supervision of the defendant as "administrador" was that portion containing commercial notices and advertisements. The libel did not appear in this portion; therefore it did not come constructively within the notice of the defendant, and consequently he is as free from liability concerning it as if the article had appeared in an altogether different paper.

He paid for the printing, it is true; but he paid not only for the printing of articles which he did not see, but which it was not his duty to see.

Further argument would seem unnecessary to show that the considerations justifying the responsibility of editors, owners and persons responsible for the management of newspapers for libelous articles appearing in their columns have no application whatsoever to the defendant.

Decisions cited to sustain the judgment not in point.

An examination of those decisions discloses that they nearly all deal with the responsibility of an owner or proprietor of a newspaper or newspaper plant.

United States v. *Ortiz*, 8 Phil. Rep. 753.

This decision is cited as "conclusive against the contention of the appellant"; having particular reference to the conviction of the defendant Paramos. The court pointed out in that decision that the culpability of the defendant arose from the fact that he was the proprietor of the printing plant which printed the libelous article, and that he was at the same time the printer and editor of the paper containing it. The distinction between that case and this seems unnecessary to point out. Of course, as owner of the printing plant where the article was printed he was liable, as the action of his printers in printing the article was constructively his own. Again, he himself edited the libel.

Commonwealth v. *Morgan*, 107 Mass. 197.—

This case simply holds that the publisher of the paper is liable irrespective of knowledge on his part. Not only was the defendant not the publisher of the Renacimiento, but he had no supervision over what was published in its editorial columns.

State v. *Mason*, 26 Oregon, 273.

In this case the issue was the liability of the *manager* or *proprietor* of a newspaper, which is not the case here.

The English Cases cited—

all deal with the question of the liability of the *proprietor* or *publisher* of the newspaper, and are so inapplicable.

People v. *Clay*, (86 Ill.)—

deals with the liability of the agent of a newspaper who "aids in publishing" the libel. The defendant took no part in the publication.

In the face of the decision that the defendant was liable in view of his participation in the management of the newspaper, it is rather surprising to note that the Supreme Court of the Philippine Islands acquitted Fidel Reyes, who, as "editor", came literally within the words of section 6 of Act 277, and who called himself "editor in chief" (R. 99, 100), on the ground that the publication of editorials was "exclusively under the control of the director" and that he had "no control whatsoever of the publishing of the newspapers." (R. 435.) It is difficult to understand why the considerations which justified the court in exculpating one whose duties on the Renacimiento brought him within the very terms of the statute, did not suffice to relieve from criminal liability one whose participation in the administration of the paper did not even bring him within its language, like Sr. Ocampo. In short, Reyes was acquitted because, although within the letter he did not come within the spirit of the statute (and this was good law), while Ocampo was convicted although within neither the letter nor the spirit of the statute.

IV.

The Supreme Court of the Philippines had no jurisdiction to increase the punishment of Kalaw.

The Court of First Instance found the defendant Kalaw guilty of publishing the libel, and sentenced him to nine months imprisonment and to the payment of a fine of 3000 pesos. The Supreme Court, on the facts as found by the lower court increased the penalty imposed to one year's imprisonment "considering the high reputation of the person libelled and the dignity of the office which he held at the time of the publication of the libel in question, and in view of the further fact that the defendant attempted to establish the truth of the alleged libelous editorial and failed to do so, thereby practically repeating and giving new publicity to the libel, and upon the recommendation of the Attorney General" (R. 440).

The question of the right of the Supreme Court to increase the penalty imposed on a defendant in a lower court was decided in the affirmative by this Court in the cases of *Trono* v. *United States*, 199 U. S. 521, and *Flemister* v. *United States*, 207 U. S. 372.

But this Court has never held that where, as here, the defendant is convicted in the court below, and that conviction is affirmed by the Supreme Court, and there is no difference of opinion between the appellate and inferior tribunal as to the facts found, the offense resulting from those facts, or the nature of the penalty to be imposed on the offender, the Supreme Court of the Philippines has the right to substitute its discretion as to the extent of punishment to be imposed for that of the trial court. An examination of the two cases referred to and the grounds of the decisions therein will show the correctness of this contention.

The Trono case.

In that case the accused were charged with murder, tried by a Court of First Instance, acquitted of the charge, and convicted of simple assault. They appealed to the Supreme Court, which reversed the Court of First Instance, and convicted them of murder in the second degree. They contended that the Supreme Court was without jurisdiction to pass on the question of their liability for murder, but was restricted on the appeal to determining whether they were guilty of assault only. But this Court held that "the reversal of the judgment of conviction (in the Court of First Instance) opens up the whole controversy, and acts upon the original judgment as if it had never been. The accused, by his own action has obtained a reversal of the whole judgment, and we see no reason why he should not, upon a new trial, be proceeded against as if no new trial had taken place" (199 U. S. 533).

The Flemister case.

There the accused was sentenced for assault under section 252 of the Penal Code of the Philippines. He appealed, and

the Supreme Court held that on the facts as found he was guilty of "resisting the authorities and their agents" under Article 249, which imposed a higher penalty. The right of the court to increase the sentence was sustained on the grounds assigned in the *Trono* case.

The distinction between the two decisions cited and this case.

The facts found by the lower court in the *Trono* case, the Supreme Court of the Philippines decided constituted murder instead of assault. The lower court, not having found that the crime of murder had been committed naturally did not base its sentence on such a finding. As stated by Mr. Justice Peckham, this resulted in throwing open the whole controversy, and the Supreme Court of the Philippines had to decide for itself—under the statutory provisions penalizing the crime of murder—what penalty to impose. It found that the lower court had erred in correctly classifying the crime, and consequently in designating the penalty. The same situation was repeated in the *Flemister* case. It was the "reversal of the judgment of conviction" which opened up the controversy, and made an original finding regarding the law and the penalty to be inflicted for its commission necessary for the Supreme Court of the Philippines to determine upon.

But in the present case no error was found in the decision of the Court below. The offense was found by both courts to be the crime of libel committed in violation of Act 277 of the Philippine Commission. Under that law the party found guilty shall be punished "by a fine of not exceeding 2000 dollars or imprisonment for not exceeding 1 year, or both." The extent to which such fine or imprisonment are to be imposed is thus left wholly within the discretion of the trial judge. The imposition of either fine or imprisonment or both within the limits designated by the statute is an exercise of the discretion conferred upon the trial judge by the statute itself, and consequently cannot be error.

It is apparent that the fundamental ground justifying the increase of penalty in the *Trono* and *Flemister* cases is wholly lacking here. There was no "reversal of the whole judgment" resulting practically in a "new trial". There was no dispute as to the finding of fact—no question but that the facts constituted in the mind of the appellate tribunal the offense found by the lower Court; no question but that section 2 of Act 277 constituted the penal clause applicable to the offense. In other words, there was no error in the court below; consequently there was no room for any corrective action on the part of the Supreme Court of the Philippines.

The action of that Court simply constituted an attempt on its part to exercise powers wholly foreign to the nature of appellate tribunals—to substitute for the discretion of the trial judge (who, in the Philippines passes on the facts as well as on the law) its own discretion as to what penalty is to be imposed. Instead of acting as an appellate tribunal it seeks to act as judge and jury in a case where, as to the amount of penalty to be imposed, there has been no error.

Act 277 of the Commission, vested the Court of First Instance with complete discretion as to the amount of punishment to inflict within the limits prescribed by law. *The defendant would have had no right or legal ground to appeal on the theory that, in the exercise of this discretion, the First Instance judge imposed the maximum fine and imprisonment instead of a lesser amount. It necessarily follows that the exercise of this discretion could not properly come within the scope of review by the appellate court.*

In *Kepner* v. *United States*, 195 U. S. 100, it was pointed out that whereas, under the Spanish system, the courts of first instance "were deemed examining courts, having preliminary jurisdiction, and the accused was not finally convicted or acquitted until the case had been passed upon in the Audiencia, or Supreme Court," "the change introduced under Military Order No. 58, as amended by Act 194 of the Commission, made the judgment of the Court of First Instance

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final," unless an appeal was taken. (*ib.* p. 121.) It was accordingly held that the acquittal of Kepner by the Court of First Instance was final and could not be reviewed by the Supreme Court of the Philippines, even though the statute expressly gave the Government a right of appeal, because of the due process clause of the Philippine Bill of Rights, which this court held was to be interpreted according to the meaning attached to that phrase in our Constitution.

It follows from this that, under the system of judicature as now established in the Philippines, the Court of First Instance had full power and jurisdiction to fix the punishment of Kalaw, and its action in that regard could not be set aside on appeal except for error of law. In other words, whatever may have been the power of the old Audiencia over the judgments of the Courts of First Instance, the exercise by such courts of their discretion in fixing punishment cannot now be set aside by the Supreme Court of the Islands, except for error in law, because such courts now act as something more than an "examining court, having preliminary jurisdiction" only. They are now courts of complete and final jurisdiction except as to the review of their judgments on appeal. We may also add that it does not appear that even the old Audiencia ever undertook to substitute its judgment for that of the Courts of First Instance in matters addressed entirely to the discretion of the lower courts.

The reasons given for increasing the punishment were insufficient in law.

The increase of sentence by the Supreme Court has been hitherto discussed solely from the point of view of its illegality arising from the fact that that tribunal is not vested with jurisdiction to substitute its *discretion* for that of the trial court.

Aside from these general considerations it may be pointed out that the law does not provide that the circumstances which are given as the foundation of the Court's action in increasing the penalty, constitute such grounds.

(a) The high reputation of the person libeled, and the high office which he holds.

It has been held that in actions brought for damages resulting from libelous publications the standing and reputation of the *plaintiff* may be taken into consideration in order to reach the measure of damages. "If he has a well established character, that there is less likelihood of the slander hurting him may be considered, whereas if he was a new man starting in the effort to build up a reputation, the same slander might well cause more harm" (*Broughton* v. *McGrew*, 39 Fed. 672).

The only way in which the plaintiff's standing is material is to determine the question of damages. But not only was that question immaterial in this suit, where no question of damages arose, but the record contains not a word on this point. Incidentally, it may be mentioned that a civil suit was pending at the time this decision was rendered, in which the Court of First Instance had awarded $30,000.00 damages to the plaintiff Worcester, as the result of this very libel.

But, as before pointed out, not only was the reputation of the Mr. Worcester immaterial to the issues of the criminal prosecution, but no attempt to prove that reputation appears in the record. This being the case—and that reputation hardly being a matter of which the court could take judicial notice—further argument seems unnecessary in order to point out that to order an increase of sentence on that ground was wholly unjustifiable and erroneous.

(b) Mr. Worcester's high position in the Government.

In answer to the contention that because Mr. Worcester occupied a high public office this is to be viewed in the light of a circumstance justifying an increase of sentence, it can only be said that to so hold is to enunciate a doctrine most pernicious in its purpose and effects. The very fact that he held such a position and incurred its accompanying responsibilities made his actions as such officer rather more justifiable subjects

of public comment that if he had been a private individual. In the words of Mr. Justice Holmes in the recent case of *Gandia* v. *Pettingill* (222 U. S. 452), apart from the question of whether the article was libelous, "he was a public officer in whose course of action connected with his office the citizens of Porto Rico (the Philippines) had a serious interest, and anything bearing on such action was a legitimate subject of statement or comment."

In sustaining the decision of the District Court for the Southern District of New York in the recent case of *United States* v. *Uhl*, 203 Fed. 157, the Circuit Court of Appeals for the Second Circuit said:

> "A decision which makes the infamy of the libel dependent upon the rank of the person libelled cannot be defended either in law or ethics."

But according to the statement of the Philippine judges, if the person whose actions the publisher of a Philippine newspaper propose to criticize holds a high public office, he must go slowly, forewarned by the knowledge that this fact alone will increase his criminal liability if, on being prosecuted for the criticism in the columns of his newspaper, it is held that he has failed to prove the truth of his statements. A more efficient method of protecting public officers in the Philippines not only from public expressions as to how they fulfil their duties, but from inquiry into the subject could hardly be devised.

(c) The fact that Kalaw "attempted to establish the truth of the alleged libelous editorial, and failed to do so."

Section 4 of Act 277 provides, as the only method of defense against a prosecution for an alleged libelous article, the establishment of its truth and that it was published with good motives and justifiable ends.

Yet because the accused availed himself of this method of defense and failed, his failure is given as a ground for raising his sentence. True, it has been held that failure to prove the truth of an alleged libelous article in a civil suit may be taken as

an aggravating circumstance in weighing damages. But the philosophy of this view consists not in the fact that the defendant has failed in his attempt to prove the truth, but as an indication that there was so little ground at the time of publication for believing its contents to be true that this fact points to the maliciousness of the spirit in which it was published.

But there is no hint in the decision that other malice existed in this case than the law ascribes to the mere fact of publication. On the contrary, it is stated in so many words, that the failure to prove the truth was "practically repeating and giving new publicity to the libel" (R. 440). It holds in effect that an unsuccessful attempt to prove that the article is not libelous is to repeat the libel and subject the accused to further punishment for an offense wholly distinct from that for which he was indicted.

With as much reason could it have been claimed that had the accused, during the trial, committed contempt of court, that fact could properly operate as a circumstance aggravating his criminal liability arising from the publication of the libel, and subjecting him to an increase of penalty therefore.

(d) The recommendation of the Attorney General.

In point of originality this cause for increase of penalty stands alone. Its justification, from the point of view of the court would appear to consist in the fact that the appellate court feels that it is so completely in the shoes of the trial judge as to justify the substitution of its discretion in the application of the penalty for that of the lower court. But we find that all through the case the prosecuting officers of the Government play a most important part. The warrant is issued by the court without an examination by the magistrate as to probable cause, but based merely on the information sworn to by the prosecuting attorney coupled with his sworn statement that he has examined witnesses under oath,

and without any statement as to whether or not he believes or has reason to believe the statements in the information are true. And not only this, but, as is seen from the cause assigned above as justifying an increase of penalty, his hand is felt in the appellate tribunal itself; for it is on his recommendation, in part at least, that the sentence is increased.

As already pointed out, aside from what seems the innate impropriety of an appellate court raising a penalty on the recommendation of the prosecuting arm of the Government, it seems plain that that court went beyond its jurisdiction in modifying in the least degree a decision on the facts as found by the court below in the absence of error of law on the part of the trial judge.

We respectfully submit that the judgment of the Supreme Court of the Philippine Islands should be reversed.

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INDEX.

Page.

STATEMENT OF THE CASE 1

ARGUMENT 2–19

No constitutional rights of the plaintiffs in error were violated in their arrest and trial. 2–12

1. Trial upon information is due process of law.... 4

Bolln v. *Nebraska*, 176 U. S. 83.
Davis v. *Burke*, 179 U. S. 399.
Hurtado v. *California*, 110 U. S. 516.
Maxwell v. *Dow*, 176 U. S. 581.
McNulty v. *California*, 149 U. S. 645.

2. Investigation by the prosecuting attorney with the aid of compulsory process is an adequate substitute for preliminary examination before a committing magistrate..... 4

United States v. *McGovern*, 6 Phil. Rep. 621.
United States v. *Raymundo*, 14 Phil. Rep. 416.
United States v. *Wilson*, 4 Phil. Rep. 317.

3. The information being under oath was a sufficient showing of probable cause..... 8

Ackerman v. *State*, 7 Wyo. 504.
State v. *Belding*, 43 Oreg. 95.
State v. *McGilvery*, 20 Wash. 240.
United States v. *Ronzone*, 27 Fed. Cas. 894.

4. The right, if any, to a preliminary examination was waived by the admission to bail..... 10

Ard v. *State*, 114 Ind. 542.
Cunningham v. *State*, 116 Ind. 433.
Hunt v. *United States*, 61 Fed. 795.
Laney v. *State*, 109 Ala. 34.
Saunders and Martin v. *Gallaher*, 2 Humphreys (Tenn.), 445.
Stewart v. *Howard*, 15 Barb. (N. Y.), 26.

ARGUMENT—Continued.

Page.

Act No. 612, although confined to the city of Manila, does not deny to plaintiffs in error or to others the equal protection of the laws .. 12–13

Barbier v. *Connolly*, 113 U. S. 27.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540.

Gardner v. *Michigan*, 199 U. S. 325.

Hayes v. *Missouri*, 120 U. S. 68.

Missouri v. *Lewis*, 101 U. S. 22.

Ocampo was justly convicted as a proprietor of the newspaper which published the libel ... 14–17

The words "proprietor" and "owner" may be treated as fairly synonymous 14

Ferguson v. *Arthur*, 117 U. S. 482.

Koppel v. *Downing*, 11 D. C. Rep. 93.

Latham v. *Roach*, 72 Ill. 179.

Yeungling v. *Schile*, 12 Fed. 97.

One who as owner or proprietor furnishes the machinery, the money, or the men to circulate a publication can not shut his eyes to its contents and so escape responsibility 14

Folwell v. *Miller*, 145 Fed. 495.

Gebhardt v. *England*, 8 N. J. L. J. 146.

Ickes v. *State of Ohio*, 16 Ohio Cir. Ct. 31.

McDonald v. *Woodruff*, 16 Fed. Cas. 49.

Perret v. *New Orleans Times Newspaper*, 25 La. Ann. 170.

Townshend on Slander and Libel, 4th ed., sec. 123.

The Supreme Court of the Philippine Islands had the power to increase the punishment of Kalaw 18–19

Dowdell v. *United States*, 221 U. S. 325.

Flemister v. *United States*, 207 U. S. 372.

Pico v. *United States*, 228 U. S. 225.

Trono v. *United States*, 199 U. S. 521.

United States v. *Abijan*, 1 Phil. Rep. 83.

United States v. *Atienza*, 1. Phil. Rep. 736.

CONCLUSION 19

CASES CITED.

	Page.
Ackerman v. *State*, 7 Wyo. 504	9
Ard v. *State*, 114 Ind. 542	12
Barbier v. *Connolly*, 113 U. S. 27	13
Bolln v. *Nebraska*, 176 U. S. 83	4
Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540	13
Cunningham v. *State*, 116 Ind. 433	12
Davis v. *Burke*, 179 U. S. 399	4
Dowdell v. *United States*, 221 U. S. 325	5, 18
Ferguson v. *Arthur*, 117 U. S. 482	14
Flemister v. *United States*, 207 U. S. 372	18
Folwell v. *Miller*, 145 Fed. 495	14
Gardner v. *Michigan*, 199 U. S. 325	13
Gebhardt v. *England*, 8 N. J. L. J. 146	15
Hayes v. *Missouri*, 120 U. S. 68	13
Hunt v. *United States*, 61 Fed. 795	12
Hurtado v. *California*, 110 U. S. 516	4, 7
Ickes v. *State of Ohio*, 16 Ohio Cir. Ct. 31	15
In re Chin K. Shue, 199 Fed. 282	6
In re Sing Tuck, 126 Fed. 386	6
In the Matter of Rule of Court, 3 Woods, 502	9
Koppel v. *Downing*, 11 D. C. Rep. 93	14
Laney v. *State*, 109 Ala. 34	12
Latham v. *Roach*, 72 Ill. 179	14
Maxwell v. *Dow*, 176 U. S. 581	4
McDonald v. *Woodruff*, 16 Fed. Cas. 49	15
McNulty v. *California*, 149 U. S. 645	4
Missouri v. *Lewis*, 101 U. S. 22	13

	Page.
Perret v. *New Orleans Times Newspaper*, 25 La. Ann. 170	15
Pico v. *United States*, 228 U. S. 225	18
Saunders and Martin v. *Gallaher*, 2 Humphreys (Tenn.) 445	12
State v. *Belding*, 43 Ore. 95	8,9
State v. *McGilvery*, 20 Wash. 240	7,9
Stewart v. *Howard*, 15 Barb. (N. Y.) 26	12
Thiede v. *Utah Territory*, 159 U. S. 510	8
Todd v. *United States*, 158 U. S. 278	6
Trono v. *United States*, 199 U. S. 521	18
Townshend on Slander and Libel, 4th ed., sec. 123	14
United States v. *Abijan*, 1 Phil. Rep. 83	18
United States v. *Atienza*, 1 Phil. Rep. 736	18
United States v. *Barber*, 140 U. S. 177	11
United States v. *McGovern*, 6 Phil. Rep. 621	5
United States v. *Raymundo*, 14 Phil. Rep. 416	5
United States v. *Ronzone*, 27 Fed. Cas. 894	9
United States v. *Wilson*, 4 Phil. Rep. 317	5
Virginia v. *Paul*, 148 U. S. 107	11
Yeungling v. *Schile*, 12 Fed. 97	14

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

MARTIN OCAMPO AND TEODORO M. KALAW, plaintiffs in error,
v.
THE UNITED STATES.
} No. 270.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The brief for plaintiffs in error states the case with sufficient fulness to show the manner in which the questions at issue are raised. Such additional facts as we think necessary will appear in the course of argument. Four grounds for reversal are presented, which may be discussed in the order chosen by the plaintiffs in error.

ARGUMENT.

I.

No constitutional rights of the plaintiffs in error were violated in their arrest and trial.

The information against the plaintiffs in error was filed under the authority of General Orders No. 58, being the Criminal Code of Procedure for the Philippines (Appendix, Philippine Penal Code, 1900, p. 287). The action of the prosecuting attorney in its filing was also governed by section 39 of Act No. 183 of the Philippine Commission incorporating the city of Manila (Vol. I, Public Laws, Phil. Com., 1903, pp. 336, 350), which provides:

> The prosecuting attorney of the city of Manila shall have charge of the prosecution of all crimes, misdemeanors, and violations of city ordinances, in the Court of First Instance and the municipal courts of the city of Manila. He shall investigate all charges of crimes, misdemeanors, and violations of ordinances, and prepare the necessary informations or make the necessary complaints against the persons accused, and discharge all other duties in respect of criminal prosecutions enjoined upon provincial fiscals in the General Provincial Act and the Criminal Code of Procedure. * * * The prosecuting attorney or any of his assistants may, if he deems it wise, conduct investigations in respect to crimes, misdemeanors, and violations of ordinances by taking oral evidence of reputed witnesses, and for this purpose may, by sub-

> pœna, summon witnesses to appear and testify under oath before him, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance.

The above act was later amended (February 3, 1903, Vol. II, 1904, pp. 271, 272) by Act No. 612 of the Philippine Commission, section 2 being as follows:

> * * * It shall not be within the power of a defendant in the municipal court in a case triable in that court to demand a preliminary investigation, except a summary one, the extent of which shall be within the discretion of the court, to enable the court to fix the bail, in any case where the prosecution announces itself ready and is ready for trial within three days, not including Sundays, after the request for a preliminary examination is presented to the court. In cases triable only in the Court of First Instance in the city of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the Prosecuting Attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment, shall have presented an information against him in proper form: *Provided, however*, That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix bail or to determine whether the offense is bailable.

1. Trial upon information is due process of law.

The procedure in the case at bar was strictly in accord with these several acts. While plaintiffs in error quote the language of section 5 of the act of Congress of July 1, 1902, 32 Stat., 691, 692, the Philippine Bill of Rights, "that no person shall be held to answer for a criminal offense without due process of law," this branch of the argument is virtually abandoned by them. It is too well settled for argument that trials upon information in lieu of indictment constitute due process of law. See—

Hurtado v. *California*, 110 U. S. 516;
McNulty v. *Same*, 149 U. S. 645;
Bolln v. *Nebraska*, 176 U. S. 83;
Maxwell v. *Dow*, 176 U. S. 581;
Davis v. *Burke*, 179 U. S. 399.

2. Investigation by the prosecuting attorney with the aid of compulsory process is an adequate substitute for preliminary examination before a committing magistrate.

The attack, therefore, is shifted from the information to the warrant of arrest, and reliance is placed upon that clause of section 5 of the Philippine Bill of Rights which provides—

> That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized;

and it is insisted that the order of arrest should have been vacated for want of a preliminary investigation resulting in a formal finding of probable cause. This

question is not a new one, but was repeatedly considered in advance of the case at bar by the Supreme Court of the Philippine Islands and similarly decided. See—

> *United States* v. *Wilson*, 4 Phil. Rep. 317;
> *United States* v. *McGovern*, 6 Phil. Rep. 621, 623;
> *United States* v. *Raymundo*, 14 Phil. Rep. 416, 436.

It was sought to be raised in this court in *Dowdell* v. *United States*, 221 U. S. 325, but the court declined to consider it, saying (p. 332):

> *If tenable at all*, no objections of this character appear to have been made in due season in the Court of First Instance.

We submit that the question has been correctly decided by the Supreme Court of the Philippine Islands.

There is no express provision in any legislation with reference to the Philippines requiring a preliminary examination in all cases of criminal offense. Provision is made, it is true, by sections 12 and 13 of the Criminal Code of Procedure—General Orders No. 58—for such an examination when complaint is laid before a committing magistrate, and by other acts of the Philippine Commission for a like examination before the municipal courts of the city of Manila and justices of the peace. Having in mind, however, the volume of business in the courts of first instance in the city of Manila, and desiring to

expedite the course of justice in criminal cases before them, the Philippine Commission determined to provide for those tribunals a less cumbersome method. Accordingly in cases triable in these courts there was substituted for a preliminary examination before a magistrate an investigation by the prosecuting attorney, aided by compulsory process and the power to administer oaths. While the right to a "preliminary examination," so-called, was denied, a preliminary investigation by a responsible and impartial officer was still required.

What substantial right of the accused is thus infringed? It is argued that such an investigation can only be had before a judicial officer; yet a United States commissioner, by whom preliminary examinations are currently conducted, is neither a court nor the judge of any court, nor vested by law with any part of the judicial power of the United States.

> *Todd* v. *United States*, 158 U. S. 278;
> *In re Sing Tuck*, 126 Fed. 386, 397;
> *In re Chin K. Shue*, 199 Fed. 282.

The fact that compulsory process and the power to administer oaths is awarded to the prosecuting attorney in aid of his investigation evidences the intent to bestow on him quasi-judicial functions. That such quasi-judicial functions may be vested in an administrative officer will not be disputed.

If it be suggested that such an investigation is *ex parte*, the objection will obtain as well to the action of a grand jury, which latter, indeed, in primitive

times, heard no witnesses (*Hurtado* v. *California*, 110 U. S. 516, 530), and may even now present upon information originating within its own body. The information in the case at bar bears the names of the witnesses who are to be called in its support, and is further sanctioned by the direct and affirmative oath of the prosecuting attorney. In its terms this oath does not even profess to be upon information or belief, but if it were so construed how would it differ again from that which sanctions the indictment of a grand jury? The assertion that the prosecuting attorney might abuse his power is well answered by the Supreme Court of the State of Washington in the case of *State* v. *McGilvery*, 20 Wash. 240, 246, in the following language:

> * * * And counsel, with much ability, have argued that to give prosecuting officers authority to cause the arrest of a citizen, and to put him on trial before a jury before such an officer is required to exhibit to the accused any evidence in support of the allegations upon which the charge is based, would be conferring a power dangerous to individual liberty, and subject to great abuse. But we think that experience has demonstrated that such apprehensions are not well founded; and it is not believed that prosecuting attorneys are less to be trusted with the responsibility of instituting criminal proceedings than police magistrates or justices of the peace. The painstaking, conscientious prosecutor will never institute a criminal charge unless he possesses what is believed to

> be sufficient competent evidence to establish the guilt of the party accused. It is not doubted that a grand jury might find an indictment where no preliminary examination of the person indicted has been had, and the indictment might well be, and frequently is, obtained without the knowledge of the defendant. The fact, however, never has been considered sufficient to prevent a trial upon the indictment. The question, and the whole question, is essentially one of procedure merely.

Nor does it serve any purpose to question the policy of this legislation if the Philippine Commission had the power, as we insist it did, to enact it. Thus the Supreme Court of the State of Oregon in the case of *State* v. *Belding*, 43 Ore. 95, upheld a procedure in all respects like the case at bar, although pausing to suggest that the legislature might well diminish the power thus lodged in the district attorney. It should be noted also that the constitutional provision in that State as to the issuance of warrants was identical with the fourth amendment to the Federal Constitution and with the language found in the Philippine Bill of Rights.

3. The information being under oath was a sufficient showing of probable cause.

Where an indictment has been found by a grand jury, a warrant undoubtedly may issue without any other or further preliminary investigation. A preliminary examination is not indispensable to the finding of an indictment or to a trial thereon. *Thiede*

v. *Utah Territory*, 159 U. S. 510. In those jurisdictions where there is no constitutional prohibition against prosecution by information, an information regularly returned and filed possesses similar efficiency.

United States v. *Ronzone*, 27 Fed. Cas. 894 (Case No. 16, 192);
State v. *McGilvery*, 20 Wash. 240, *supra;*
Ackerman v. *State*, 7 Wyo. 504;
State v. *Belding*, 43 Oreg. 95.

The indictment in the one case or the information in the other furnishes the probable cause upon which the warrant may be issued.

The rule of court laid down by Mr. Justice Bradley in 3 Woods, 502 (brief of plaintiffs in error, page 10), for the guidance of United States commissioners is not in conflict with this principle or at variance with the case at bar. To direct United States commissioners not to issue warrants of arrest—no indictment or information being then before the trial court—upon affidavits stating the facts upon mere information and belief is quite a different thing from forbidding a trial court to issue its warrant against those already under indictment or information pending before it. Neither does the rule condemn the designation by the legislature of the prosecuting attorney rather than some other officer as the person who shall conduct a preliminary investigation into the offense. At most it would only require him to base his action upon the direct testimony of witnesses, and justify him in refusing to file an information where no

statements, other than upon information and belief, were before him. So understood, there has been no departure in this case from the suggested rule.

4. The right, if any, to a preliminary examination was waived by the admission to bail.

Plaintiffs in error were arrested and brought before the court of first instance for the city of Manila on the 5th of November, 1908, the day the information was filed. They were regularly arraigned and the information read to them. Thereupon, without challenging in any way the manner of their arrest or demanding a preliminary investigation, they were upon their motion admitted to bail. The terms of their bail bond were fixed by section 67 of General Orders No. 58,[1] and bound them to appear and answer the charge in whatever court it might be tried, to hold themselves amenable to the orders and process of the court, and, if convicted, to appear for judgment and render themselves to the execution thereof.

---

[1] SECTION 67. All personal bail bonds must be executed by a written undertaking executed by at least two sufficient sureties (with or without the defendant, as the court in its discretion may demand) and duly acknowledged, in substantially the following form:

A complaint (or information) having been filed on the ---- ------ day of ------, 19--, in the court of ------, ------, Province of ------, charging (name of defendant) with the offense of (designating it generally), and he having been admitted to bail in the sum of ---- pesos.

Now, therefore, we, ------ ------ and ------ ------, of ------ ------, jointly and severally, hereby undertake that

It was not until November 7, two days later, that they moved the court to vacate the order of arrest issued against them, and thereafter, on November 10, they moved the court to have submitted for examination the proceedings of the preliminary investigation conducted by the prosecuting attorney, and on November 12 that the court itself should hold a preliminary investigation before they should be called upon either to demur or answer. All these motions having been overruled in order, they sought to raise the same question by demurrer to the information, filed on November 12, 1908, which was also overruled.

We submit that none of these motions were seasonably made.

The preliminary investigation of the person accused is preliminary to and not a part of his prosecution (*Virginia* v. *Paul*, 148 U. S. 107), and where it precedes the indictment its purpose is to secure the attendance of the accused to answer any indictment which may be found by the grand jury (*United States* v. *Barber*, 140 U. S. 177). Unquestionably if a right at all, it is a right which the accused may waive at his

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the above (naming the defendant), will appear and answer the charge above mentioned in whatever court it may be tried, and will at all times hold himself amenable to the orders and process of the court, and if convicted will appear for judgment, and render himself to the execution thereof; or if he fails to perform any of these conditions, that we will pay to the United States the sum of ..... pesos (inserting the sum to which the defendant shall be admitted to bail).

(Signed) ....

....

....

pleasure. Since such a hearing can terminate only in the discharge of the accused, or in his commitment for trial, or in his release on bail, the latter is necessarily the end of the hearing. When the accused has entered into bail to answer trial the warrant for his arrest has accomplished its purpose, spent its force, and is *functus officio*. Thereafter he is no longer held by the process of the court but by his own undertaking. What purpose can then be served by inquiring into the validity of his arrest or the existence of probable cause therefor?

Hunt v. *United States*, 61 Fed. 795, 798;
Ard v. *State*, 114 Ind. 542;
Laney v. *State*, 109 Ala. 34;
Cunningham v. *State*, 116 Ind. 433;
Saunders and Martin v. *Gallaher*, 2 Humphreys (Tenn.) 445;
Stewart v. *Howard*, 15 Barb. (N. Y.) 26.

II.

Act No. 612, although confined to the city of Manila, does not deny to plaintiffs in error or to others the equal protection of the laws.

It is well settled that the guaranty in the Constitution as to the equal protection of the laws means only that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes of persons in the same place or under like circumstances. It does not require uniformity in a geographical sense.

In *Missouri* v. *Lewis*, 101 U. S. 22, 30, this court said:

> * * * The last restriction, as to the equal protection of the laws, is not violated by any diversity in the jurisdiction of the several courts as to subject-matter, amount, or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right, in like cases and under like circumstances, to resort to them for redress. Each State has the right to make political subdivisions of its territory for municipal purposes, and to regulate their local government. As respects the administration of justice, it may establish one system of courts for cities and another for rural districts, one system for one portion of its territory and another system for another portion. Convenience, if not necessity, often requires this to be done, and it would seriously interfere with the power of a State to regulate its internal affairs to deny to it this right. We think it is not denied or taken away by anything in the Constitution of the United States, including the amendments thereto.

See also—

Barbier v. *Connolly*, 113 U. S. 27, 31;
Hayes v. *Missouri*, 120 U. S. 68;
Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540;
Gardner v. *Michigan*, 199 U. S. 325.

III.

Ocampo was justly convicted as a proprietor of the newspaper which published the libel.

Section 6 of the Philippine Libel Act (Appendix, Phil. Penal Code, 1900, p. 168) may be repeated as follows:

> Every author, editor, or proprietor of any book, newspaper, or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial as fully as if he were the author of the same.

The evident purpose of this act is to punish the author who conceives and composes the libel, the editor who approves and inserts it in the columns of his journal, and the proprietor who furnishes the means for its publication and dissemination.

The words "proprietor" and "owner" may be treated as fairly synonymous.

> *Ferguson* v. *Arthur*, 117 U. S. 482;
> *Koppel* v. *Downing*, 11 D. C. App. 93, 103;
> *Yuengling* v. *Schile*, 12 Fed. 97, 105;
> *Latham* v. *Roach*, 72 Ill. 179, 181.

It is the theory of the law that one who as owner or proprietor furnishes the machinery, the money, or the men to circulate a publication can not shut his eyes to its contents and so escape responsibility.

> Townshend on Slander and Libel, 4th ed., § 123.
> *Folwell* v. *Miller*, 145 Fed. 495, 496;

McDonald v. *Woodruff*, 16 Fed. Cas. 49 (case No. 8, 770);
Ickes v. *State of Ohio*, 16 Ohio Cir. Ct. 31;
Gebhardt v. *England*, 8 N. J. L. J. 146;
Perret v. *New Orleans Times Newspaper*, 25 La. Ann. 170.

That Ocampo, in addition to his duties as administrator, is one of the owners of the newspaper known as "El Renacimiento" is quite clear from the testimony. The witness Arellano testified (R. 54):

> El Renacimiento was founded on the idea of some young men who wanted to establish a better understanding between the people of the Philippine Islands and the Americans, who had but recently arrived here. With this great idea in view there was formed an association, and that group of young men formed the editorial staff of El Renacimiento, and as one left another came in and took his place.

In order to establish the paper a syndicate, or association, or if you choose a "philanthropic partnership" (R. 53), raised a fund composed of voluntary contributions which seem to have amounted to 500 pesos each. Ocampo was one of those active in organizing this syndicate (R. 113), and contributed his own 500 pesos (R. 53). In order to give the nascent enterprise a local habitation Ocampo purchased real estate, taking title in his own name but apparently as trustee for the owners of El Renacimiento (R. 59), and in this house the newspaper plant was installed and has since been conducted (R. 61). Ocampo continues his connec-

tion with the enterprise in the capacity of administrator or manager. He employs and pays the director (R. 87), the editors (R. 82), the typesetters and printers (R. 79), the distributers, carriers, and newsboys (R. 61), and the collectors of subscriptions (R. 89). In addition, he looks after the advertising matter and in general has entire charge of the finances of the paper, its publication and distribution.

To quote again from the witness Arellano (R. 54)—

> Q. Now who are the other owners of El Renacimiento, if there are others, besides Sr. Ocampo?
>
> A. The shareholders are Sr. Martin Ocampo, Sr. Manuel Palma, Angel José, Felipe Barretto, Gregorio Mariano and myself;

and having been shown a copy of the newspaper containing the libel in question, he was asked—

> Q. That is El Renacimiento published at No. 23 Calle Gunao at the present time?
>
> A. Yes, sir.
>
> Q. Of which Sr. Ocampo is one of the owners?
>
> A. Yes, sir.

It is difficult to see how proprietorship could be more plainly established. It is true that some of the philanthropic gentlemen who founded this publication stoutly aver that they contributed without any thought of sharing in its ownership. Their abdication would carry more conviction if it were pronounced under other circumstances. Certain it is that somewhere is to be found a man or men who own this piece of property. Who should it be if not

those who shared in its purchase? And among these who if not Sr. Ocampo, who gave of his own means to found it, who furnished its abiding place, who collects and controls its income, who employs and discharges its workmen, who distributes its issues to the public, who reinvests its profits in the newspaper plant (R. 57), and who no doubt—were he and his associates confronted by an experience not uncommon among newspaper men—would be called on to devise measures to meet its deficits?

Again, sundry witnesses testified, Sr. Ocampo himself being silent, that his duties as administrator did not call upon him to take knowledge of all that might be published in the columns of his journal, but his effort to escape on this ground is a fair illustration of the very thing which it was the purpose of this statute to prevent. Under the Spanish system prevailing prior to the passage of this act a newspaper had an official known as the "responsible editor," who, presumably, for increased compensation, took upon himself the risk and burden of answering all charges of libel that might be brought. He was the scapegoat upon whose single head could be vicariously laid the sins and iniquities of all of his fellows. The design of the present law is to do away with this vicious system and to impose a proper penalty upon all of those responsible.

We need not stop to justify the action of the court in acquitting Fidel Reyes, one of the editors. Whether right or wrong, it can not be pleaded in relief of Ocampo.

IV.

The Supreme Court of the Philippine Islands had the power to increase the punishment of Kalaw.

It is quite well settled that the Supreme Court of the Philippines has the power to review the entire case and to modify the sentence.

> *United States* v. *Atienza*, 1 Phil. Rep. 736;
> *United States* v. *Abijan*, 1 Phil. Rep. 83;
> *Trono* v. *United States*, 199 U. S. 521;
> *Flemister* v. *United States*, 207 U. S. 372;
> *Dowdell* v. *United States*, 221 U. S. 325;
> *Pico* v. *United States*, 228 U. S. 225.

We need not pause to argue the reasons which it gave in this case for so doing. Nor is it true that its power depends upon some finding of error in other respects in the judgment of the court below. Thus, the Supreme Court of the Philippines in the *Dowdell* case, *supra*, affirmed the judgment but increased the sentence from six years and one day to eight years and one day, saying:

> In sentencing the two principal offenders, the trial judge took their drunkenness into consideration as an extenuating circumstance. The facts above recited, as we read them in the record, did not justify him in doing so. There was no such drunkenness as decreases their responsibility for their acts.
>
> On the other hand, the Attorney-General asks for an increase of the penalty on the ground that the offense was committed by night. It is impossible to accede to this request, as, although the safe was disposed of

> after nightfall the moneys the taking of which constitutes the statutory offense, were withdrawn from the treasury during daylight.
>
> Our conclusion is that the defendants Dowdell and Harn, who alone have appealed, are guilty of malversation of public funds under Article 390 of the Penal Code, without any extenuating or aggravating circumstance. The penalty imposed is that of *presidio mayor*, in its medium degree, with imprisonment for eight years and one day, one-half of the costs in this instance to be paid by each of the appellants, the judgment of the court below in other respects being affirmed;

while in the *Pico* case it affirmed the judgment but decreased the sentence from life imprisonment to seventeen years, four months, and one day. The action in each instance was upheld by this court.

CONCLUSION.

The judgment as to both plaintiffs in error should be affirmed.

JOHN W. DAVIS,
Solicitor General.

MARCH, 1914.

○

liminary investigation by the prosecuting attorney upon which he files a sworn information is a compliance with such provision.

A finding of probable cause for arrest by a prosecuting attorney is only *quasi*-judicial; and a statute, otherwise valid, is not invalidated by delegating the duty of investigation to a prosecuting attorney.

On the evidence in this case the trial court properly held that the defendant was, under the law of the Philippine Islands, the responsible proprietor of the newspaper which published the libel on which the prosecution was based.

The appellate jurisdiction of the Supreme Court of the Philippine Islands is not confined to errors of law but extends to a review of the whole case. It has power to reverse the judgment of the Court of First Instance in a criminal case and find the accused guilty of a higher crime and increase the sentence. *Trono* v. *United States*, 199 U. S. 521.

18 Philippine, 1, affirmed.

THE facts, which involve the validity of a judgment of the Supreme Court of the Philippine Islands in a prosecution for criminal libel and the validity of Act No. 612 of the Philippine Commission, are stated in the opinion.

Mr. William R. Harr, with whom *Mr. Clement L. Bouve* was on the brief, for plaintiffs in error.

The Solicitor General for the United States.

MR. JUSTICE PITNEY delivered the opinion of the court.

On November 5, 1908, an information was filed in the Court of First Instance of the City of Manila, charging plaintiffs in error, with others, as editors, proprietors, owners, directors, writers, managers, administrators, printers, and publishers of the newspaper "El Renacimiento," with publishing in that city a libel against Dean C. Worcester, then a member of the Philippine Commission. The information was subscribed and sworn to by the acting prosecuting attorney, and appended to it, and likewise sworn to by him, was the following declara-

tion: "A preliminary investigation has been conducted under my direction, having examined the witnesses under oath, in accordance with the provisions of section 39 of Act 183 (Manila Charter), as amended by section 2 of Act 612 of the Philippine Commission." Both affidavits were made before the judge of the Court of First Instance, who thereupon issued warrants of arrest, pursuant to which the parties accused were on the same day brought before the court. The information was read to them, and the court allowed them until November 7th to answer. Their attorney, being present, asked that they be furnished with a copy of the information, which request was granted, and a copy was delivered to each of the accused. Thereafter, and on November 7th, before entering any demurrer or answer, they moved to vacate the order of arrest, upon the ground that it was made without any preliminary investigation held by the court, and without any tribunal, magistrate, or other competent authority having first determined that the alleged crime had been committed, and that there was probable cause to believe the defendants guilty of it; the procedure adopted being, as was claimed, in violation of §§ 12 and 13 of General Orders, No. 58, issued by the Military Governor April 23, 1900, and of paragraphs 1, 3, 11, and 18 of § 5 of the Philippines Bill, enacted by the Congress of the United States on July 1, 1902; and it was insisted that § 2 of Act No. 612 of the Philippine Commission, which took from accused persons in the City of Manila the right to a preliminary investigation, was contrary to the cited paragraphs of the Philippines Bill, because it provided that accused persons in that city might be deprived of their liberty without due process of law, denied to the inhabitants of that city the equal protection of the law, deprived persons detained there to answer for a criminal offense of the "proper judicial proceedings," and violated the guaranty against arbitrary detention.

This motion being overruled, defendants moved for an order requiring the prosecuting attorney to submit to the court and to them for examination the proceedings of the preliminary investigation alleged to have been conducted by him. This motion was likewise overruled.

Defendants then asked the court to hold a preliminary investigation before calling upon them to either demur to or answer the complaint. This motion being denied, demurrers were filed, which were overruled, and the defendants were called upon to plead to the information. They stood mute, and a plea of not guilty was entered for each of them. Upon their request, separate trials were granted. Ocampo was found guilty, and sentenced to six months imprisonment and to pay a fine of 2000 pesos and one-fifth of the costs of the action. Kalaw was also found guilty, and sentenced to nine months imprisonment and to pay a fine of 3000 pesos and one-fifth of the costs. Upon their writ of error, the Supreme Court of the Philippine Islands affirmed the judgment as to Ocampo, and modified the sentence imposed upon Kalaw so as to increase the period of his imprisonment to twelve months. 18 Phil. Rep. 1. The present writ of error was then sued out.

The insistence is here renewed, that the arrest and trial of plaintiffs in error was without a preliminary finding of probable cause, and therefore in violation of rights secured to them by the Philippine Bill of Rights (Act of July 1, 1902, § 5, c. 1369, 32 Stat. 691, 692). This act, following the provisions of certain of the Amendments of the Constitution of the United States, declares, *inter alia:*

"SEC. 5. That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws

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"That no person shall be held to answer for a criminal offense without due process of law; . . .

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"That no warrant shall issue, but upon probable cause, supported by oath or affirmation. . . ."

Prior to its enactment, and under date April 23, 1900, General Orders, No. 58, had been promulgated by the Military Governor, amending the Criminal Code of Procedure in certain respects, and providing by §§ 12 and 13 that every person making complaint charging the commission of a crime must inform the magistrate of all persons believed to have any knowledge of its commission, whereupon the magistrate must issue subpœnas requiring them to attend as witnesses, and must examine the informant or prosecutor and the witnesses and take their depositions in writing, and if satisfied from the investigation that the crime complained of had been committed and that there was reasonable ground to believe that the party charged had committed it, the magistrate must issue an order of arrest.

By § 40 of Act No. 183 of the Philippine Commission (the Manila Charter, enacted July 31, 1901), municipal courts with criminal jurisdiction were established, and were empowered to conduct preliminary examinations and to release, or commit and bind over any person charged with an offense to secure his appearance before the proper court; it being among other things provided that "every person arrested shall, without unnecessary delay, be brought before a municipal court or a court of first instance for preliminary hearing, release on bail or trial."

Section 44 provided for two justices of the peace for the City of Manila, to exercise within the city the civil jurisdiction conferred upon justices of the peace in Act No. 136; but they were debarred from exercising any criminal jurisdiction, such jurisdiction within the city being confined to Courts of First Instance and the municipal courts.

By Act No. 186 (August 5, 1901), the existing courts of justices of the peace in the City of Manila were abolished, and civil actions and proceedings then pending therein were transferred to the courts of justices of the peace established under Act No. 183, while pending criminal actions and proceedings were transferred to the municipal courts established under Act No. 183.

Act No. 194 (August 10, 1901), in its first section provides: "Every justice of the peace in the Philippine Islands is hereby invested with authority to make preliminary investigation of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law now vested in the Judges of Courts of First Instance." And it is by the same section made the duty of every justice of the peace, when written complaint under oath is made to him that a crime has been committed within his municipality, and there is reason to believe that any person has committed it, or when he has knowledge of facts tending to show the commission of a crime within his municipality by any person, to issue an order for the arrest of the accused and have him brought before the justice for preliminary examination. Section 2 prescribes the procedure, which accords to the accused the right to examine the complaint and affidavits, to be present and hear and cross-examine the witnesses for the Government, to offer witnesses in his own behalf, and give his own testimony if he desires; and "upon the conclusion of the preliminary investigation, if the Justice of the Peace is of the opinion that there is reasonable cause to believe that an offense has been committed and that the accused is guilty thereof, he shall so declare and shall adjudge that the accused be remanded to jail for safe-keeping to await the action of the Judge or Court of First Instance, unless he give bail," etc.; . . . "On the other hand, if the Justice of the Peace be of the opinion that no crime has been committed, or that there is no reasonable ground to

believe the accused guilty thereof, the Justice of the Peace shall order the discharge of the accused. Such discharge, however, shall not operate as a final acquittal of the accused, but he may be again arrested and prosecuted for the same offense."

It was and is contended by plaintiffs in error that the procedure thus indicated ought to have been followed in their case.

The prosecution proceeded upon the theory that the above requirements as to preliminary examination and the finding of probable cause were repealed as to the City of Manila by Act No. 612 of the Philippine Commission (February 3, 1903), § 2 of which provides:

"In cases triable only in the Court of First Instance in the City of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the Prosecuting Attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment [Act No. 183,] shall have presented an information against him in proper form: *Provided, however,* That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable."

Section 39 of the Charter Act, here referred to, provides:

"The Prosecuting Attorney of the city of Manila shall have charge of the prosecution of all crimes, misdemeanors and violations of city ordinances, in the Court of First Instance and the municipal courts of the city of Manila. He shall investigate all charges of crimes, misdemeanors, and violations of ordinances, and prepare the necessary informations or make the necessary complaints against the persons accused, and discharge all other duties in respect to criminal prosecutions enjoined upon provincial fiscals in the General Provincial Act and the Criminal Code of Procedure. . . . The Prosecuting Attorney or any